

United States 10

Circuit Court of Appeals

For the Ninth Circuit.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS, and VERNITA WATTS,
Appellants,

vs.

JERUSHA CRABB and JOHN CRABB,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Oregon.

FILED

SEP 23 1918

F. M. MONROTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS, and VERNITA
WATTS,

Appellants,

vs.

JERUSHA CRABB and JOHN CRABB,

Appellees.

Names and Addresses of the Attorneys of Record.

WILL M. PETERSON and RALEY and RALEY,
Pendleton, Oregon, for the Appellants.

ALFRED S. BENNETT, The Dalles, Oregon, and
JAMES A. FEE, Pendleton, Oregon, for the
Appellees.

—————

*In the District Court of the United States for the
District of Oregon.*

Case No. 7340—IN EQUITY.

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Citation on Appeal.

United States of America to Jerusha Crab and John Crab, Husband and Wife, and to Alfred S. Bennett and James A. Fee, Your Attorneys of Record, GREETING:

YOU ARE HEREBY NOTIFIED that a certain case in equity in the United States District Court in and for the District of Oregon, wherein Jerusha Crab and John Crab, husband and wife, are plaintiffs, and Homer I. Watts, Marvel Watts, Jennie Anderson Watts and Vernita Watts are defendants, an appeal has been allowed the defendants therein to the United States Circuit Court of Appeals for the Ninth Circuit, and you are hereby cited and admonished to be and appear in said Court thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Hon. CHARLES E. WOLVERTON, Judge of the United States District Court for the District of Oregon, this 31st day of May, 1918.

CHAS. E. WOLVERTON,

District Judge.

I hereby acknowledge receipt of a copy of the foregoing citation and due service of such citation is hereby accepted at Pendleton, Oregon, this — day of June, 1918, and all other and further service thereof is hereby waived.

JAMES A. FEE,

One of Attys. for Plffs. [1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

[Endorsed]: No. 7340. In the District Court of the United States for the District of Oregon. Jerusha Crab et al., Complainants, vs. Homer I. Watts et al., Respondents. Citation. U. S. District Court, District of Oregon. Filed Jun. 7, 1918. G. H. Marsh, Clerk. [2]

In the District Court of the United States for the District of Oregon.

November Term, 1916.

BE IT REMEMBERED, that on the 18th day of December, 1916, there was duly filed in the District Court of the United States for the District of Oregon, a bill of complaint, in words and figures as follows, to wit: [3]

In the United States District Court, for the District of Oregon.

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS, and VERNITA
WATTS,

Defendants,

Complaint in Equity.

Now comes the plaintiffs in the above-entitled cause, and praying for relief, show to the Court:

The South half (S.1/2) Section 30, Township 5 North, Range 35 East, W. M., aforesaid. [5] which tracts, taken together covered and included all of the land and all of the property owned by the said Thomas Watts at the time of his death, except one 80 acres, which was of barely sufficient value to pay off the mortgage which existed upon said real property and to pay the necessary funeral expenses and the expenses of administering his estate, and that they did procure a deed purporting to be executed by the said Thomas Watts, giving to the said defendant Jennie Anderson Watts the said West half of the southeast quarter, and the southeast quarter of the southwest quarter of said Section 32, hereinbefore described, and to the defendant Vernita Watts the said South half of Section 30, hereinbefore described, and that immediately after his death they caused said deeds to be recorded upon the deed records of Umatilla County, Oregon. That said signatures to said deeds were not in the handwriting of said Thomas Watts, but purported to have been signed by making his mark.

VI.

Plaintiffs further allege that said deeds and each of them were wholly without any valuable or other consideration and that the same, if executed by him at all, were secured from the said Thomas Watts when he was not fully conscious and was mentally incapacitated from making such a conveyance and by fraud and deception and undue influence, and by taking advantage of his enfeebled mental and physical condition, but that the said deeds were secured

and obtained when the said Thomas Watts was sick in bed at the home of the defendant Homer I. Watts, and when the only other person present was a witness secured by said defendant, and that these plaintiffs have no knowledge nor means of knowledge as to the exact details as to how said deeds were obtained, or as to whether they were induced and secured by such undue influence and fraud, misrepresentations and conduct as hereinbefore set forth and were actually signed by the said Thomas Watts, or whether his name was forged thereto, but plaintiffs allege that said deeds were not the [6] conscious and intelligent act of said Thomas Watts if signed by him at all, and that he had no intention or purpose of disposing of the said property or conveying it as set forth therein, and that in equity and good conscience said deeds are fraudulent, void, and of no effect.

VII.

Plaintiff Jerusha Crab alleges that she is the owner in equity, by virtue of inheritance from her father of an undivided one-third interest in all of the real property hereinbefore described, to wit:

The West half of the Southeast quarter, and the Southeast quarter of the Southwest quarter of Section 32, and the South half of Section 30, all in T. 5 N., R. 35 East, W. M.,

as tenant with the said Homer I. Watts and Marvel Watts, who are the owners of the other two-thirds, but that the said deed, as recorded, makes it appear upon the records of said county that she is not the owner of any interest therein, but that the same be-

longs entirely to the said Jennie Anderson Watts and Vernita Watts.

VIII.

That plaintiffs believe and allege that the said Homer I. Watts and Marvel Watts and the other defendants have some arrangement between themselves by which they are to be the real owners and to receive the benefits from such land, and that the deeds were procured in the form they were solely for the purpose of enabling the said Homer I. Watts to take the acknowledgment of the same without calling in a third and disinterested party.

IX.

That the one-third interest of the plaintiff Jerusha Crab in said property is of the value of more than \$3,000, to wit, of the value of \$15,000.

X.

That immediately after the death of the said Thomas Watts, and the recording of said deeds, as aforesaid, the said defendants went into [7] the sole possession of said property, ousting the plaintiff Jerusha Crab, and wrongfully claiming sole ownership thereover, and that they have ever since kept the sole possession of the same and continue to oust the plaintiff, and have, during that time, taken and received divers large sums of money as the rents and profits, but the exact amount and the arrangement among themselves as to the possession of the property are to these plaintiffs entirely unknown.

XI.

That plaintiffs have no speedy or adequate remedy at law. That said Vernita Watts is an infant under

the age of eighteen years.

WHEREFORE, plaintiffs pray this Court for a discovery, and that the defendants be required and compelled to answer on oath—

FIRST. As to whether said deeds were forgeries, or as to whether they were actually signed and executed by the said Thomas Watts, and as to whether they claim, at the time they were so signed, that he was conscious and in the intelligent exercise of his faculties.

SECOND. As to what is the arrangement among themselves under which they are operating and possessing said property.

THIRD. As to what sums they or any of them have received as the rents and profits of said property.

And plaintiffs further pray that said deeds be set aside and cancelled and held for naught, and that the defendants be required to surrender up the same to be cancelled, and that they and each of them be forever restrained and enjoined from setting up or claiming any estate, right, title, or interest thereunder, and that the plaintiff Jerusha Crab be decreed to be the owner of an undivided one-third interest in the property hereinbefore described and that she recover immediate possession [8] of her said undivided one-third interest therein, and that she have an accounting of the rents and profits so received by said defendants from said property, and that this Court proceed to partition and divide the said property between herself and the said Homer I. Watts and Marvel Watts,

in accordance with the principles of equity, and for such other relief as may seem to the Court just and equitable.

And the plaintiffs pray to the Court that a writ of subpoena issue out of and under the seal of this Honorable Court to be directed to the said plaintiffs commanding them and each of them, on a certain day and under a certain penalty in the said writ to be inserted, personally to be and appear before this Court and then and there full, true, and perfect Answer make under oath to all and singular the premises hereinbefore set forth and further to stand to perform and abide such further orders, direction, and decree herein as to the Court shall seem meet and agreeable to equity and good conscience.

JAMES A. FEE and
A. S. BENNETT,

Attorneys and Solicitors for Plaintiffs. [9]

State of Washington,
County of Whitman,—ss.

We, Jerusha Crab and John Crab, being each duly sworn and each speaking for himself, says: I am one of the plaintiffs above-named and that the foregoing complaint in equity is true as I verily believe.

JERUSHA CRABB.
JOHN CRABB.

Subscribed and sworn to before me this 12th day of December, 1916.

[Seal] HARRY TERHUNE,
Notary Public for the State of Washington, Residing
at St. John.

U. S. District Court. Filed Dec. 18, 1916. G. H. Marsh, Clerk. District of Oregon. [10]

And afterwards, to wit, on the 18th day of December, 1916, there was issued out of said court a subpoena ad respondendum, in words and figures as follows, to wit: [11]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named Homer I. Watts by handing to and leaving a true and correct copy thereof, together with the copy or the complaint with him personally at Athena in said District on the 19 day of December, A. D. 1916.

JOHN MONTAG,
U. S. Marshal.
By D. B. Fuller,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named Marvel Watts, as father and natural guardian of Vernita Watts, a minor, by handing to and leaving a true and correct copy thereof, together with the copy of the complaint with Marvel Watts, as father and natural guardian of Vernita Watts, a

minor, personally, at Portland, in said District, on the 19 day of December, A. D. 1916.

JOHN MONTAG,

U. S. Marshal.

By D. B. Fuller,

Deputy. [12]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named Jennie Anderson Watts by handing to and leaving a true and correct copy thereof, together with the copy of the complaint with her personally at Athena, in said District, on the 19 day of December, A. D. 1916.

JOHN MONTAG,

U. S. Marshal.

By D. B. Fuller,

Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named Vernita Watts by handing to and leaving a true and correct copy thereof, together with the copy of the complaint with Vernita Watts personally, at

Athena, in said District, on the 19 day of December,
A. D. 1916.

JOHN MONTAG,
U. S. Marshal.
By D. B. Fuller,
Deputy. [13]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Oregon,—ss.

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein named Marvel Watts by handing to and leaving a true and correct copy thereof with him (individually), personally, at Athena, in said District, on the 19 day of December, A. D. 1916.

JOHN MONTAG,
U. S. Marshal.
By D. B. Fuller,
Deputy. [14]

*In the District Court of the United States, for the
District of Oregon.*

No. 7340.

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Complainants,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS, and VERNITA
WATTS,

Defendants.

Subpoena Ad Respondendum.

The President of the United States of America, to
Homer I. Watts, Marvel Watts, Jennie Ander-
son Watts, and Vernita Watts, GREETING:

You, and each of you, are hereby commanded that you be and appear in said District Court of the United States, for the District of Oregon, at the courtroom thereof, in the City of Portland, in said District, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein Jerusha Crab and John Crab are complainants, and you are defendants, and further to do and receive what our said District Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the Marshal of said District, or your Deputy, to make due service of this our Writ of Subpoena and to make due return of the same with your proceedings thereon into this Court within twenty days from this date.

Hereof fail not.

Witness the Honorable CHARLES E. WOLVERTON and the Honorable ROBERT S. BEAN, Judges of said Court, and the Seal thereof affixed at Portland, in said District, this 18th day of December, 1916.

G. H. MARSH,
Clerk.

By F. L. Buck,
Deputy Clerk.

MEMORANDUM, PURSUANT TO EQUITY
RULE No. 12 OF THE SUPREME COURT
OF THE UNITED STATES.

The defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

Returned and filed December 22, 1916.

G. H. MARSH,

Clerk. [15].

And afterwards, to wit, on the 4th day of January, 1917, there was duly filed in said court, an answer of Homer I. Watts, in words and figures as follows, to wit: [16]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Answer of Homer I. Watts.

Comes now the defendant, Homer I. Watts, and answering plaintiffs' bill of complaint filed herein, for himself and for himself alone, denies, admits, avers and alleges as follows:

I.

This defendant ADMITS paragraph I of said bill of complaint, and the whole thereof.

II.

This answering defendant ADMITS paragraph II of said bill of complaint, and the whole thereof.

III.

And answering paragraph III of said bill of complaint, this answering defendant ADMITS that said Thomas Watts died intestate on the 20th day of April, 1914, but DENIES that at the date of his death he was the owner of the west half of the southeast quarter, or the southeast quarter of the southwest quarter of section 32, township 5 north, range 35 east of the Willamette Meridian, or was the owner of the south half of section 30, township 5 north, range 35 east of the Willamette Meridian, and AVERS the fact to be that at the date of the death of the said Thomas Watts on the 20th day of April, 1914, one of the defendants of this cause, to wit, Vernita E. Watts, was the owner of the south half of section 30, in township 5 north, of range 35 east, W. M., and another of these defendants, [17] to wit, Jennie Anderson Watts, was the owner of the West one-half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, in township 5 north, of range 35 east, subject only to a life interest existing in the said Thomas Watts at the time of his death, and AVERS the fact to be that upon the death of the said Thomas Watts the said Jennie Anderson Watts became the absolute owner in fee simple of the said last-described tract

of land, freed from the said life estate of the said Thomas Watts.

IV.

ADMITS that the estate of the said Thomas Watts has been fully administered upon in the County Court of the State of Oregon for Umatilla County, and said administration has been duly closed and the administrator discharged.

V.

And answering paragraph V of said bill of complaint, this answering defendant ADMITS that for a considerable time prior to the death of the said Thomas Watts he was old and feeble in body and was sick in body, but DENIES that the said Thomas Watts was at all feeble in mind or that he was at all mentally weak or was at all easily influenced, or was at all incapable of doing business, or was at all not of intelligent comprehension of his affairs, or was at all not of a conscious or intelligent making or disposition of his property among those entitled to his bounty, and AVERS and ALLEGES the fact to be that at all times prior to and up to two days prior to the date of the death of the said Thomas Watts he was strong and firm in mind and was mentally capable of doing business, and was fully possessed of an intelligent comprehension of his affairs, and was thoroughly competent to make a conscious and intelligent disposition of his property among those entitled to his bounty and otherwise; and DENIES that shortly before the death of the said [18] Thomas Watts, or at any time before or at all or while Thomas Watts was on his deathbed or suffer-

ing from his last sickness, or so incapacitated as stated in plaintiffs' bill of complaint, or at all or at any other time, this defendant or these defendants or either of them or any of them conspired together, or at all conspired in any manner to cheat or defraud the plaintiff, Jerusha Crab, or anyone else, out of her interest in her father's estate, or to secure a deed purporting to be a deed from said Thomas Watts to the said Jennie Anderson Watts for the west half of the southeast quarter or the southeast quarter of the southwest quarter of section 32, township 5 north, of range 35 east of the Willamette Meridian, or any part thereof, or to secure or procure a deed to the said Vernita Watts for the south half of section 30, township 5 north, range 35 east, W. M., or any part thereof, or at all, or that this defendant or the other defendants or either or any one of them in any manner either did conspire together or did at all influence or induce the said Thomas Watts to make said deeds or either thereof; ADMITS that the lands described included all of the lands of the said Thomas Watts, except 80 acres, and ADMITS that said 80 acres was barely sufficient in value to pay for the mortgage which existed and to pay the necessary funeral expenses and expenses of administering the estate, and this defendant DENIES that he did or that any of the defendants did in any manner procure a deed purporting to be executed by the said Thomas Watts, giving to the said Jennie Anderson Watts the said west half of the southeast quarter, or the southeast quarter of the southwest quarter of said section 32, or any part thereof,

or to the defendant Vernita Watts the south half of section 30, or either or any part thereof; ADMITS that this defendant, in the manner hereinafter alleged, did cause the said deeds to be recorded [19] upon the Deed Records of Umatilla County, Oregon, and ADMITS that the said Thomas Watts did not in his own handwriting write his name to said deeds or either of them, but said deeds were signed by mark, and this defendant AVERS and ALLEGES the fact to be that the said Thomas Watts, about one week prior to his death and without any solicitation, persuasion or influence of any kind or character from this defendant or from anyone else, so far as this defendant has any knowledge whatever, did request this defendant to write and prepare for his execution a deed to Jennie Anderson Watts for the west half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, township 5 north, range 35 east, W. M., and to write and prepare a deed to Vernita Watts for the S.1/2 of Sec. 30, and did request and direct this defendant in the deed so prepared to Jennie Anderson Watts to reserve therein to the grantor, Thomas Watts, a life interest in said real property, and in pursuance of the directions of the said Thomas Watts this defendant did prepare both of such deeds, and thereupon and on the 14th day of April, 1914, the said Thomas Watts then being fully possessed of his mental faculties and knowing well what he was doing, did request this defendant to sign the grantor's name to said deeds, and thereupon the said Thomas Watts did execute the said deeds by making

his mark and by touching the pen while this defendant did make a cross for his mark in the presence of this defendant and in the presence of G. M. Jonas, and thereafter and on the same day, to wit, on the 14th day of April, 1914, the said Thomas Watts being then also fully conscious of what he was doing and fully understanding and knew what he was doing, did deliver the said deeds and both of them to this defendant, with direct instructions and directions to either himself place the said deeds of record, or to cause them to be recorded, so that the grantees therein might receive the benefit thereof, and the [20] said Thomas Watts did then and there absolutely part with the possession of said deeds and each of them and this defendant did thereafter deliver the said deeds to Marvel Watts, one of the defendants in this case, and did advise the said Marvel Watts of the instructions given to have the said deeds recorded, and the said deeds and each of them were thereafter duly and regularly recorded under the instructions given by the said Thomas Watts, and such deeds and each of them were recorded on the 20th day of April, 1914.

VI.

And this answering defendant, answering paragraph VI of said bill of complaint, DENIES that said deeds, or either of them, were wholly or at all without valuable or other consideration, and AVERS the fact to be that the said Jennie Anderson Watts was and is the wife of one of the sons of the said Thomas Watts, and the said Vernita Watts was and is the granddaughter of the said Thomas Watts, and

that for more than five years prior to the date of his death the said Thomas Watts had lived with and made his home with the said Jennie Anderson Watts and said Vernita Watts and the said Marvel Watts, and during all of that time the said Jennie Anderson Watts and Vernita Watts had cared for and looked after the welfare and comfort of the said Thomas Watts; and DENIES that the said deeds, or either of them, were or was secured from the said Thomas Watts when he was not fully conscious or when he was mentally incapacitated from making such conveyances, and AVERS the fact to be that at the time the said deeds were executed, said Thomas Watts was fully conscious of what he was doing and was capable mentally of making such conveyances and each of them, and had full knowledge of just what he was doing and why he was so doing; and DENIES that the said deeds or either of them were procured through fraud or through deceit or through any [21] undue influence or by taking any advantage of either his feeble mental or physical condition, and DENIES that the said Thomas Watts was enfeebled mentally. ADMITS that said deeds were executed when the said Thomas Watts was in a feeble physical condition, but DENIES that they were executed while the said Thomas Watts was sick in bed; ADMITS that said deeds and each of them were executed at the home of this defendant, and ADMITS that only one other person was present, but DENIES that the said person was procured to be present as a witness by this defendant or by either or any of the defendants herein; DENIES that the

plaintiffs have no knowledge or means of knowledge as to the details as to how said deeds were obtained, and DENIES that the said plaintiffs have no knowledge as to whether the said deeds were induced or secured by undue influence or fraud, or by misrepresentation or by conduct as set forth in plaintiffs' complaint, or as to whether or not the said deeds were actually signed by the said Thomas Watts, or as to whether his name was forged thereto, and DENIES that said deeds or either of them were not the conscious or intelligent act of the said Thomas Watts, and DENIES that he had no intention or purpose of disposing of the said property or conveying it, as set forth in said deeds, and DENIES that either in equity or good conscience or at all or for any reason said deeds, or either of them, is either fraudulent or void or of no effect, and AVERS the fact to be that the execution of said deeds and each of them was the intelligent act of the said Thomas Watts and that they were executed and delivered under his express direction and while he had full consciousness and knowledge of just what he was doing, and AVERS the fact to be that each of said deeds is a valid bona fide and honest conveyance of said property.

VII.

This answering defendant answering paragraph VII, DENIES [22] that the plaintiff Jerusha Crab is the owner of in equity or otherwise or at all, either by virtue of inheritance from her father or otherwise, of an undivided one-third interest, or of any interest in or to all

or any of the west half of the southeast quarter, of the southeast quarter of the southwest quarter of section 32, or the south half of section 30, all in township 5 north, range 35 east, or of any part in or to or interest therein, either as a tenant with the said Homer I. Watts or Marvel Watts or with either or any of them or at all, and DENIES that either the said Homer I. Watts or the said Marvel Watts are the owners of the other two-thirds or of any interest in or to the said property whatever, or any part thereof; ADMITS that the said deed as recorded makes it appear upon the records that Jerusha Crab is not the owner of any interest therein, and this answering defendant AVERs the fact to be that the said deeds as recorded truly state the real and true ownership of said real property.

VIII.

Answering paragraph VIII this answering defendant DENIES that the said Homer I. Watts or the said Marvel Watts or the other defendants, or either or any of them, have any arrangement between themselves by which they are to be the real owners or to receive the benefit from such land, or that the said deeds or either of them was procured in the form they were solely or at all for the purpose of enabling the said Homer I. Watts to take the acknowledgment of the same without calling in a third or disinterested party, and DENIES that the said deeds, or either of them, were procured by this defendant at all or in any manner or for any purpose except as hereinbefore fully set forth.

IX.

DENIES that the one-third interest of the plaintiff [23] Jerusha Crab or any interest of the said Jerusha Crab in said property is of the value of more than \$3,000 or is of any value whatever, and DENIES that the said Jerusha Crab has a one-third interest or any other interest in said property, or any part thereof.

X.

DENIES that immediately after the death of the said Thomas Watts or the recording of said deeds, the defendants went into the possession of said property or ousted the plaintiff, Jerusha Crab therefrom, or wrongfully claimed sole ownership thereover, or that they have ever since kept the sole possession of the same, except for the purposes and in the manner hereinafter in this paragraph alleged; ADMITS that these defendants have received some money as the rents and profits from the said lands, in the manner and for the purposes herein set forth, and in this connection this defendant alleges; that for a long period of time prior to the death of the said Thomas Watts, and while the said Thomas Watts was the owner of said lands, this defendant, Homer I. Watts, and the said defendant Marvel Watts were occupying the said lands, and the whole thereof, under lease from the said Thomas Watts, and in and by the terms of said lease this defendant, Homer I. Watts, and the defendant, Marvel Watts, did farm, till and cultivate the said lands, and did pay and deliver to the said Thomas Watts as rental therefor a full one-third of all grain grown upon any and all of said

lands each year, the said one-third to be delivered to the said Thomas Watts at the warehouse, in sacks furnished by this defendant, and the said Marvel Watts, and in addition thereto this defendant and the said Marvel Watts did, from their own resources, pay insurance upon all crops so raised and grown; and this defendant does further allege and aver that at the date of the death of the said Thomas Watts this defendant [24] and the defendant Marvel Watts were so in possession of said premises and the whole thereof, occupying the same under a lease thereof upon the terms hereinbefore set forth.

XI.

ADMITS that Vernita Watts is an infant under the age of eighteen years.

And this defendant, further answering under oath, and answering plaintiffs' demand for a discovery, says, that neither of said deeds was a forgery, and does say that both of said deeds were the free act of the said Thomas Watts, and does say that the name of Thomas Watts to said deeds was not written thereon by the said Thomas Watts, but that the name T. J. Watts to each of said deeds was written by this defendant, Homer I. Watts, in the presence of the said Thomas Watts and in strict accord with his directions and at his request, and at a time when he was possessed of his full mental faculties and knew just what he was doing, and why he was doing it, and that the said Thomas Watts knew and fully understood the contents of said deeds and each of them at the time he directed this defendant to sign his name thereto, and that the said Thomas Watts

was in the full possession and exercise of his mental faculties and was fully conscious of everything that was done respecting said deeds, and that the said Thomas Watts, at that time and in that condition, directed this defendant to make his cross for him, and did touch the pen while the cross was being made in the presence of this defendant and in the presence of G. M. Jonas, and did then and there, while in the exercise of full mental consciousness and his full mental faculties, acknowledge the said deed to be his free and voluntary act, and did thereafter deliver the said deeds to this defendant, and did instruct this defendant to record the same or to cause the same to be recorded and delivered to the parties entitled to receive the same. [25]

And further answering plaintiff's demand for discovery, this defendant says on oath, and avers and alleges, that this defendant and the defendant Marvel Watts are operating the said properties under a lease and under the same terms and conditions as they were being operated for many years prior to the death of the said Thomas Watts, except that the one-third of the crop grown upon the lands now standing in the name of Jennie Anderson Watts is delivered to her, and the one-third of the crop from the lands now standing in the name of Vernita Watts is delivered to her or her representatives, each year.

And further answering plaintiffs' demand for discovery, this defendant says upon oath, and avers and alleges, that of the lands standing in the name of Jessie Anderson Watts there has been but one crop harvested since the said death of Thomas Watts;

that during the year 1914 the tillable lands of said premises were in summer fallow and no crop was raised therefrom; that the said lands were seeded in the fall of 1914, and crop was taken therefrom during the year 1915, and that the said lands are in summer fallow during the year 1916; that the crop taken therefrom during the year 1915 consisted of 2,028 sacks of wheat, containing 4,201-20/60 bushels, and that the said entire crop was sold to the Preston-Shaffer Milling Company at Athena, Oregon, at 80 cents per bushel, and that the entire crop brought in cash \$3,361.06; that of the above amount of money Jennie Anderson Watts received as rental \$1,120.35, and this defendant received \$1,120.35, and Marvel Watts received \$1,120.35; that the said Jennie Anderson Watts received her rental of \$1,120.35 free of all costs and charges of harvesting and delivery; that this defendant Homer I. Watts, and Marvel Watts received their share of said crops as tenants, but paid therefrom all necessary expenses of the producing of said crop; and that at the time of the death of said Thomas Watts, to [26] wit, during the year 1914, the lands now standing in the name of Vernita Watts were in crop and the said lands of the said Vernita Watts for the year 1914 produced 2,865 sacks of wheat, containing 5,766-40/60 bushels of wheat, and that said wheat was sold to the Preston-Shaffer Milling Company for 67 cents per bushel and there was paid therefor the sum of \$3,863.65; that there was paid to Vernita Watts as rental for the use of the said lands for the year 1914 one-third of the amount received from the said crop, to wit, the

sum of \$1,287.85, and the other two-thirds thereof was received in equal shares by this defendant, Homer I. Watts, and the other tenant, Marvel Watts; that the said rental was paid to the said Vernita Watts free from all charges and expenses of the production of said crops; that from the part received by this defendant and Marvel Watts they paid all the expenses of the production of said crop; and during the year 1915 the lands of the said Vernita Watts were still under lease to this defendant and to Marvel Watts as partners, and were sown to spring grain, and there was produced from the lands of the said Vernita Watts during the year 1915, 1,085 sacks of wheat containing 2,250-20/60 bushels, and the same was sold to the Preston-Shaffer Milling Company of Athena, Oregon, at 85 cents per bushel, and brought \$1,912.50; that the full one-third thereof, to wit, \$637.50, was received by the said Vernita Watts as rental, and the other two-thirds was received by this defendant and the said Marvel Watts in equal shares as tenants of said property, and that the said one-third so delivered to the said Vernita Watts as rental was paid to her free and clear of all charges of production of said crop, and the cost of production of said crop was paid by this defendant and by the said Marvel Watts, and the said lands of the said Vernita Watts are still under lease to this defendant and Marvel Watts as partners under the same terms, and the said lands are being summer [27] fallowed during the year 1916.

And this defendant having fully answered plaintiffs' bill of complaint, now prays judgment that the

said bill be dismissed and that this defendant have and recover of and from the plaintiffs his costs and disbursements of this suit.

HOMER I. WATTS,
WILL M. PETERSON and
RALEY and RALEY,

Attorneys and Solicitors for the Defendant, Homer
I. Watts.

State of Oregon,
County of Umatilla,—ss.

Personally appeared before me, the undersigned, a notary public for the State of Oregon, the defendant, Homer I. Watts, in the above-entitled cause, who being duly sworn, says, that he is the defendant in the above cause, and that the matters and things contained in said answer are true.

HOMER I. WATTS.

Sworn and subscribed before me this 4th day of
January, 1917.

[Seal]

J. H. RALEY,
Notary Public for Oregon.

My com. expires Mar. 16, 1917.

Service by certified copy of the foregoing answer of Homer I. Watts is hereby accepted at Pendleton, Oregon, this — day of Jan'y, 1917, and all other service thereof is hereby waived.

JAMES A. FEE,
One of Attys. for Complaint.

Filed January 4, 1917. G. H. Marsh, Clerk. By
S. A. Newberry, Deputy. Rec'd at Portland, Ore-
gon, January 5, 1917. G. H. Marsh, Clerk. By

F. L. Buck, Deputy, for the District of Oregon.
[28]

And afterwards, to wit, on the 4th day of January, 1917, there was duly filed in said court an answer of Marvel Watts, in words and figures as follows, to wit: [29]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Answer of Marvel Watts.

Comes now the defendant, Marvel Watts, and answering plaintiffs' bill of complaint filed herein, for himself and for himself alone, DENIES, ADMITS, AVERS and ALLEGES as follows:

I.

This defendant ADMITS paragraph I of said bill of complaint, and the whole thereof.

II.

This answering defendant ADMITS paragraph II of said bill of complaint, and the whole thereof.

III.

And answering paragraph III of said bill of com-

plaint, this answering defendant ADMITS that said Thomas Watts died intestate on the 20th day of April, 1914, but DENIES that at the date of his death he was the owner of the west half of the southeast quarter, or the southeast quarter of the southwest quarter of section 32, township 5 north, range 35 east of the Willamette Meridian, or was the owner of the south half of section 30, township 5 north, range 35 east of the Willamette Meridian, and AVERS the fact to be that at the date of the death of the said Thomas Watts on the 20th day of April, 1914, one of the defendants in this cause, to wit, Vernita E. Watts, [30] was the owner of the south half of section 30, in township 5 north, of range 35 east, W. M., and another of these defendants, to wit, Jennie Anderson Watts, was the owner of the west one-half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, in township 5 north, of range 35 east, subject only to a life interest existing in the said Thomas Watts at the time of his death, and AVERS the fact to be that upon the death of the said Thomas Watts the said Jennie Anderson Watts became the absolute owner in fee simple of the said last described tract of land free from the said life estate of the said Thomas Watts.

IV.

ADMITS that the estate of the said Thomas Watts has been fully administered upon in the County Court of the State of Oregon for Umatilla County, and said administration has been duly closed and the administrator discharged.

V.

And answering paragraph V of said bill of complaint, this answering defendant ADMITS that for a considerable time prior to the death of the said Thomas Watts he was old and feeble in body and was sick in body, but DENIES that the said Thomas Watts was at all feeble in mind or that he was at all mentally weak or was at all easily influenced, or was at all incapable of doing business, or was at all not of intelligent comprehension of his affairs, or was at all not of a conscious or intelligent making or disposition of his property among those entitled to his bounty, and AVERS and ALLEGES the fact to be that at all times prior to and up to two days prior to the date of the death of the said Thomas Watts he was strong and firm in mind and was mentally capable of doing business, and was fully possessed of an intelligent comprehension of his affairs, and was thoroughly competent to make a conscious and intelligent disposition of [31] his property among those entitled to his bounty and otherwise; and DENIES that shortly before the death of the said Thomas Watts, or at any time before or at all or while Thomas Watts was on his death bed or suffering from his last sickness, or so incapacitated as stated in plaintiffs' bill of complaint, or at all or at any other time, this defendant conspired with either or any of the other defendants or any one else, or at all conspired in any manner to cheat or defraud the plaintiff, Jerusha Crab, or anyone else, out of her interest in her father's estate or to secure a deed purporting to be a deed from said Thomas Watts to

the said Jennie Anderson Watts for the west half of the southeast quarter or the southeast quarter of the southwest quarter of section 32, township 5 north, of range 35 east of the Willamette Meridian, or any part thereof, or to secure or procure a deed to the said Vernita Watts for the south half of section 30, township 5 north, range 35 east, W. M., or any part thereof, or at all, or that this defendant, with the other defendants or either or any one of them, in any manner either did conspire together or did at all influence or induce the said Thomas Watts to make said deeds or either thereof; ADMITS that the lands described included all of the lands of the said Thomas Watts, except 80 acres, and ADMITS that said 80 acres was barely sufficient in value to pay for the mortgage which existed and to pay the necessary funeral expenses and expenses of administering the estate, and this defendant DENIES that he did or that any of the defendants with his knowledge did in any manner procure a deed purporting to be executed by the said Thomas Watts, giving to the said Jennie Anderson Watts the said west half of the southeast quarter, or the southeast quarter of the southwest quarter of said section 32, or any part thereof, or to the defendant Vernita Watts the south half of section 30, or either or any part thereof; ADMITS that this defendant, in the manner hereinafter alleged, [32] did cause the said deeds to be recorded upon the Deed Records of Umatilla County, Oregon, and ADMITS that the said Thomas Watts did not in his own handwriting write his name to said deeds or either of them, but this defendant, answer-

ing for himself, is informed and believes and therefore alleges on information and belief, that the said deeds were signed by mark by the said Thomas Watts; that this answering defendant was not present at the time the said deeds or either of them was executed by the said Thomas Watts, and has no personal knowledge of what at that time transpired, except this answering defendant alleges that whatever was done by the said Thomas Watts in the matter of the execution of said deeds or either of them, was not done and was not procured to be done at the solicitation or with the knowledge or by any persuasion or influence of any kind or character from this defendant, nor from anyone else so far as this defendant has any knowledge whatever; and this answering defendant further alleges that if the said deeds were executed upon the 14th day of April, 1914, the date upon which they purport to have been executed, that at that time the said Thomas Watts was in full possession of all of his mental faculties and was capable of making an intelligent disposition of his property and was fully possessed of all of his mental faculties, and that the said Thomas Watts remained in possession of his mental faculties and had full knowledge of what he was doing until the afternoon of the 18th day of April, 1914, and at all times prior thereto; and this answering defendant, Marvel Watts, further alleges and avers that he did not know of the execution of said deeds or of either of them until the 15th day of April, 1914, when he was informed that the said deeds had been executed and was informed by the defendant, Homer I. Watts,

that the said deeds had been executed and were in the office of the said Homer I. Watts, [33] with instructions to have the same recorded; that thereafter this answering defendant received the said deeds from said Homer I. Watts, and caused the same to be recorded on the 20th day of April, 1914.

VI.

This answering defendant, answering Paragraph VI of said bill of complaint, DENIES that said deeds or either of them were wholly or at all without valuable or other consideration, and avers the fact to be that the said Jennie Anderson Watts was and is the wife of the defendant, Marvel Watts, and the daughter-in-law of the said Thomas Watts, and that said Vernita Watts was and is the granddaughter of the said Thomas Watts, and that for more than five years prior to the date of his death the said Thomas Watts had lived with and made his home with the said Jennie Anderson Watts and said Vernita Watts and the said Marvel Watts, and during all that time the said Jennie Anderson Watts and Vernita Watts had cared for and looked after the welfare and comfort of the said Thomas Watts; and this answering defendant further says that, while he has no personal knowledge of the immediate conditions under which the said deeds were executed, that he is informed and believes, and therefore alleges upon information and belief that at the time the said deeds were executed said Thomas Watts was fully conscious of what he was doing and was capable mentally of making such conveyances and each of them, and had full knowledge of just what he

was doing and why he was so doing, and alleged upon information and belief the fact to be that the execution of the said deeds, and each of them, was the intelligent act of the said Thomas Watts and that they and each of them were executed and delivered under his express directions and while he had full consciousness and knowledge of just what he was doing; and that each of said deeds is a valid, bona fide and honest conveyance [34] of said property, and DENIES upon information and belief that either of said deeds was induced or secured by fraud or undue influence.

VII.

This answering defendant, answering paragraph VII, DENIES that the plaintiff, Jerusha Crab, is the owner in equity or otherwise or at all, either by virtue of inheritance from her father or otherwise, of an undivided one-third interest or of any interest in or to all or any of the lands described in plaintiff's complaint, or any part thereof, or in or to any interest therein, either as a tenant with the said Homer I. Watts or Marvel Watts, or with either or any of them or at all, and DENIES that either the said Homer I. Watts or the said Marvel Watts are the owner of the other two-thirds or of any interest in or to the said property whatever, or any part thereof, and ADMITS that the said deeds as recorded make it appear upon the records that Jerusha Crab is not the owner of any interest therein, and this answering defendant AVERS the fact to be that the said deeds as recorded truly state the real and true ownership of said property.

VIII.

And this defendant, Marvel Watts, DENIES that the said Homer I. Watts and this defendant, or either of them, have any arrangement between themselves by which they or either of them is to be the real owner of said property or any part thereof, or to receive the benefit from such lands except as tenants under lease, as hereinafter alleged; and DENIES that the said deeds or either of them was procured in the form they were solely or at all for the purpose of enabling the said Homer I. Watts to take the acknowledgment of the same without calling in a third or disinterested party; and DENIES that the said deeds or either of them was procured by this defendant at all or in any manner or for any purpose.

[35]

IX.

DENIES that the one-third interest of the plaintiff Jerusha Crab, or any interest of said Jerusha Crab in said property is of the value of more than \$3,000.00, or is of any value whatever, and DENIES that the said Jerusha Crab has a one-third interest or any other interest in said property or any part thereof.

X.

DENIES that immediately after the death of said Thomas Watts or the recording of said deeds this defendant, or either of the defendants, went into the possession of said property or ousted the plaintiff, Jerusha Crabb therefrom, or wrongfully claim sole ownership thereof, or that they have ever since or at all kept the sole possession of the same, except for

the purposes and in the manner hereinafter alleged. ADMITS that this defendant has received some money and has the rents and profits from the said lands in the manner and for the purposes herein set forth, and in this connection this defendant alleges that for a long period of time prior to the death of the said Thomas Watts and while the said Thomas Watts was the owner of said lands, this defendant Marvel Watts, and the defendant, Homer I. Watts, were partners occupying the said lands and the whole thereof under lease, and as tenants of and from the said Thomas Watts, and in and by the terms of the said lease this defendant, Marvel Watts, and the defendant, Homer I. Watts, did farm, till and cultivate the said lands and did pay and deliver to the said Thomas Watts as rental therefor a full one-third of all grain grown upon any and all of said lands each year, the said one-third to be delivered to the said Thomas Watts at the warehouse in sacks furnished by this defendant, and the said Homer I. Watts, and in addition thereto this defendant and the Homer I. Watts did from their own resources pay insurance upon all crops so raised and grown; and this defendant further alleges [36] and avers that at the date of the death of the said Thomas Watts this defendant and the said Homer I. Watts were so in possession of said premises and the whole thereof, occupying the same under lease thereof upon the premises hereinbefore set forth.

XI.

This defendant ADMITS that Vernita Watts is

an infant under the age of eighteen years.

And this defendant further answering under oath, and answering plaintiffs' demand for a discovery, says:

That to the utmost and best of all of his knowledge, information and belief, neither of said deeds was a forgery, and says upon information and belief that neither of said deeds was a forgery, and therefore alleges and does say that to the utmost of his knowledge, information and belief both of said deeds were the free act of the said Thomas Watts, and therefore does aver and allege, upon information and belief, that both of said deeds were the free act of the said Thomas Watts, and to the utmost of his knowledge, information and belief does say that the name of Thomas Watts to said deeds was not written thereon by the said Thomas Watts, but that the name T. J. Watts to each of said deeds was written by the defendant, Homer I. Watts, in the presence of the said Thomas Watts and in strict accord with his direction and at his request, and at a time when he was possessed of his full mental faculties and knew just what he was doing, and why he was doing it, and that the said Thomas Watts knew and fully understood the contents of said deeds and each of them at the time they were signed, and that the said Thomas Watts was in full possession and exercise of his mental faculties and was fully conscious of everything that was done respecting said deeds, and that the said Thomas Watts at that time and in that condition directed the defendant, Homer [37] I. Watts to make his cross for him, and did touch the

pen while the cross was being made, in the presence of the defendant Homer I. Watts, and in the presence of G. M. Jonas, and did then and there, while in the exercise of full mental consciousness and while possessed of his full mental faculties, acknowledge the said deeds to be his free and voluntary act, and did thereafter deliver the said deeds to the said Homer I. Watts, and did instruct the said Homer I. Watts to record the same or to cause the same to be recorded and to be delivered to the parties entitled to receive them, and therefore this answering defendant alleges this statement of facts to be true upon information and belief.

And further answering plaintiffs' demand for discovery, this defendant says on oath, and avers and alleges, that this defendant and the defendant Homer I. Watts are operating the said properties under a lease and under the same terms and conditions as they were being operated for many years prior to the death of the said Thomas Watts, except that one-third of the crop grown upon the lands now standing in the name of Jennie Anderson Watts is delivered to her, and the one-third of the crop from the lands now standing in the name of Vernita Watts is delivered to her or her representatives, each year.

And further answering plaintiffs' demand for discovery, this defendant says upon oath, and avers and alleges the fact to be, that of the lands standing in the name of Jennie Anderson Watts there has been but one crop harvested since the death of Thomas Watts; that during the year 1914 the till-

able land on said premises was in summer fallow and no crop was raised therefrom, that the said lands were seeded in the fall of 1914 and crop was taken therefrom during the year 1915, and that said lands were in summer fallow during the year 1916; that the crop taken therefrom during the year 1915 consisted of 2028 sacks of wheat [38] containing 4201-20/60 bushels, and the said entire crop was sold to the Preston-Shaffer Milling Company at Athena, Oregon, at 80 cents per bushel, and that the entire crop brought in cash \$3,861.06; that of the above amount of money, Jennie Anderson Watts received as rental \$1,120.35, and this defendant received \$1,120.35, and Homer I. Watts received \$1,120.35; that the said Jennie Anderson Watts receives her rental of \$1,120.35 free of all costs and charges of harvesting and delivery, and this defendant and Homer I. Watts received their share of the said crops as tenants, but paid therefrom all necessary expenses of the production of said crops; and that at the time of the death of the said Thomas Watts, to wit, during the year 1914, the lands now standing in the name of the said Vernita Watts was in crop and the said lands of the said Vernita Watts for the year 1914 produced 2,865 sacks of wheat, containing 5,766-40/60 bushels of wheat, and the said wheat was sold to the Preston-Shaffer Milling Company for 67 cents per bushel and there was paid therefor the sum of \$3,863.65; that there was paid to Vernita Watts as rental for the use of the said lands for the year 1914 one-third of the amount received from the said crop, to wit, the sum of

\$1,287.85, and the other two-thirds thereof was received in equal shares by this defendant and the said Homer I. Watts, as tenants; that the said rental was paid to the said Vernita Watts free from all charges and expenses of the production of said crops; that from the part received by this defendant and Homer I. Watts they paid all the expenses of the production of said crop; that during the year 1915 the lands of the said Vernita Watts were still under lease to this defendant and to Homer I. Watts as partners, and was sown to spring grain, and there was produced from the lands of the said Vernita Watts in the year 1915, 1085 sacks containing 2250-2/60 bushels, and the same was sold to the Preston-Shaffer Milling Company at 85 [39] cents per bushel and brought \$1,912.50; that the full one-third thereof, to wit, \$637.50, was received by the said Vernita Watts as rental and the other two-thirds was received by this defendant and the said Homer I. Watts in equal shares, as tenants of said property, and that the said one-third so delivered to the said Vernita Watts as rental was paid to her free and clear of all charges of production of said crop, and the cost of production of said crop was paid by this defendant and by the said Homer I. Watts, and the said lands of the said Vernita Watts are still under lease to this defendant and to Homer I. Watts as partners, under the same terms, and the said lands are being summer fallowed during the year 1916.

And this defendant having fully answered plaintiffs' bill of complaint, now prays judgment that the

said bill be dismissed and that this defendant have and recover of and from the plaintiffs his costs and disbursements of this suit.

WILL M. PETERSON and
RALEY and RALEY,

Attorneys and Solicitors for the Defendant, Marvel
Watts.

State of Oregon,
County of Umatilla,—ss.

On this 4th day of January, 1917, at Pendleton, in Umatilla County and State aforesaid, before me personally appeared Marvel Watts, who being first duly sworn, deposes and says on oath, that he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to such matters therein as are stated on information and belief, and *and* as to those matters, he believes them to be true.

MARVEL WATTS.

Sworn to and subscribed before me this 4th day of January, 1917.

[Seal]

J. H. RALEY,

Notary Public for Oregon.

My com. expires Mar. 16, 1917. [40]

Service by receipt of certified copy of the foregoing answer is hereby accepted and all further or other service thereof is hereby waived this —— day of January, 1917.

JAMES A. FEE,

One of Attys. for *Complaint.*

Filed Jany. 4, 1917. G. H. Marsh, Clerk U. S. District Court for the District of Oregon. By S. A. Newberry, Deputy.

Received at Portland, Oregon, January 5, 1917.

G. H. MARSH,
Clerk.

F. L. Buck,
Deputy. [41]

And afterwards, to wit, on the 4th day of January, 1917, there was duly filed in said court an answer of Jennie Anderson Watts, in words and figures as follows, to wit: [42]

In the District Court of the United States, for the District of Oregon.

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE ANDERSON WATTS and VERNITA WATTS,

Defendants.

Answer of Jennie Anderson Watts.

Comes now the defendant, Jennie Anderson Watts, and answering plaintiffs' bill of complaint filed herein, for herself and for herself alone, DENIES, ADMITS, AVERS and ALLEGES as follows:

I.

This defendant ADMITS paragraph I of said bill of complaint, and the whole thereof.

II.

This answering defendant ADMITS paragraph II of said bill of complaint, and the whole thereof.

III.

And answering paragraph III of said bill of complaint, this answering defendant ADMITS that said Thomas Watts died intestate on the 20th day of April, 1914, but DENIES that at the date of his death he was the owner of the west half of the south-east quarter, or the southeast quarter of the southwest quarter of section 32, township 5 north, range 35 east of the Willamette Meridian, or was the owner of the south half of section 30, township 5 north, range 35 east of the Willamette Meridian, and AVERS the fact to be that at the date of the death of the said Thomas Watts on the 20th day of April, 1914, one of the defendants in this cause, to wit, Vernita E. Watts, [43] was the owner of the south half of section 30, in township 5 north, of range 35 east, W. M., and another of these defendants, to wit, Jennie Anderson Watts, was the owner of the west one-half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, in township 5 north, of range 35 east, subject only to a life interest existing in the said Thomas Watts at the time of his death, and AVERS the fact to be that upon the death of the said Thomas Watts the said Jennie Anderson Watts became the absolute owner in fee simple of the said last-described tract

of land, freed from the said life estate of the said Thomas Watts.

IV.

ADMITS that the estate of the said Thomas Watts has been fully administered upon in the county court of the State of Oregon for Umatilla County, and said administration has been duly closed and the administrator discharged.

V.

And answering paragraph V of said bill of complaint, this answering defendant ADMITS that for a considerable time prior to the death of the said Thomas Watts he was old and feeble in body and was sick in body, but DENIES that the said Thomas Watts was at all feeble in mind or that he was at all mentally weak or was at all easily influenced, or was at all incapable of doing business, or was at all not of intelligent comprehension of his affairs, or was at all not of a conscious or intelligent making or disposition of his property among those entitled to his bounty, and AVERS and ALLEGES the fact to be that at all times prior to and up to two days prior to the date of the death of the said Thomas Watts he was strong and firm in mind and was mentally capable of doing business, and was fully possessed of an intelligent comprehension of his affairs, and was thoroughly competent to make a conscious and intelligent [44] disposition of his property among those entitled to his bounty, and otherwise; and DENIES that shortly before the death of the said Thomas Watts, or at any time before or at all or while Thomas Watts was on his death bed or suf-

fering from his last sickness, or so incapacitated as stated in plaintiff's bill of complaint, or at all or at any other time, this defendant conspired with either or any of the other defendants or anyone else, or at all conspired in any manner to cheat or defraud the plaintiff, Jerusha Crab, or anyone else, out of her interest in her father's estate or to secure a deed purporting to be a deed from said Thomas Watts to the said Jennie Anderson Watts for the west half of the southeast quarter of the southwest quarter of section 32, township 5 north, of range 35 east of the Willamette Meridian, or any part thereof, or to secure or procure a deed to the said Vernita Watts for the south half of section 30, township 5 north, range 35 east, W. M., or any part thereof, or at all, or that this defendant, with the other defendants or either or any one of them, in any manner either did conspire together or did at all influence or induce the said Thomas Watts to make said deeds or either thereof; ADMITS that the lands described included all of the lands of the said Thomas Watts, except 80 acres, and ADMITS that said 80 acres was barely sufficient in value to pay for the mortgage which existed and to pay the necessary funeral expenses and expenses of administering the estate, and this defendant DENIES that he did or that any of the defendants with her knowledge did in any manner procure a deed purporting to be executed by the said Thomas Watts, giving to the said Jennie Anderson Watts the said west half of the southeast quarter, or the southeast quarter of the southwest quarter of said section 32, or any part thereof, or to

the defendant Vernita Watts the south half of section 30, or either or any part thereof; ADMITS that this defendant, [45] in that she caused said deeds to be recorded in the Deed Records of Umatilla County, Oregon, and ADMITS that said signatures to said deeds were not in the handwriting of said Thomas Watts, but purported to have been signed by making his mark, and this answering defendant alleges that she was not present at the time said deeds were signed or executed, but is informed and believes and therefore alleges upon information and belief that the said deeds were signed by the said Thomas Watts by making his mark.

VI.

DENIES that said deeds or either of them was wholly or at all without any valuable or other consideration, and avers and alleges the fact to be that this defendant was and is a daughter-in-law of the deceased, and the defendant Vernita Watts was and is a granddaughter of the deceased, Thomas Watts, and that for more than five years prior to the date of the death of the said Thomas Watts he had lived with and made his home with this defendant, and said Vernita Watts and the defendant Marvel Watts, and during all of said time this defendant and the defendant Vernita Watts had cared for and looked after the welfare and comfort of the said Thomas Watts, and this defendant avers the fact to be that said deeds, and each of them, were executed and delivered for a good and valuable consideration, and this defendant further says that she has no personal knowledge of the immediate conditions under

which the said deeds were executed, and therefore DENIES upon information and belief that the said deeds or either of them were at all secured from the said Thomas Watts when he was not fully conscious or was mentally incapacitated from making such conveyances, or that they were, or either of them was obtained from him either by or through fraud or deceit or undue influence, or by taking advantage of his mental or physical condition, or that said deeds were [46] secured or obtained when the said Thomas Watts was sick at the home of the defendant Homer I. Watts, or when the only other person present was a witness secured by said defendant, Homer I. Watts, and DENIES on information and belief that said deeds or either of them were not the conscious or intelligent act of the said Thomas Watts, or that he had no intention or purpose of disposing of the said property or conveying it as set forth in said deeds, and DENIES that in equity or good conscience or at all or for any reason said deeds or either of them was fraudulent or void or of no effect, and this answering defendant AVERS the fact to be that she is informed and believes that the said deeds and each of them were duly and regularly executed and delivered by the said Thomas Watts at a time when he was mentally capable in every way of making, executing and delivering said deeds and that the said deeds and each of them are the conscious and intelligent act of the said Watts, and that the said deeds, and each of them, are valid and in full force and effect, and therefore this defendant alleges upon information and belief that the said

deeds, and each of them were so executed by the said Thomas Watts, and are valid and subsisting conveyances of the said lands.

VII.

DENIES that the said Jerusha Crab is the owner in equity or otherwise or at all, by virtue of inheritance from her father or otherwise, of an equitable one-third interest or of any interest at all in all or any of the real property described in said complaint, and DENIES that she is a tenant with the said Homer I. Watts or Marvel Watts or either of them, and DENIES that the said Homer I. Watts or the said Marvel Watts or either of them are the owners of the other two-thirds of said lands, or of any interest whatever in or [47] to said lands, and avers and alleges the fact to be that this defendant is the sole and only owner of the west half of the south-east quarter, and the southeast quarter of the southwest quarter of section 32, and that Vernita Watts is the sole and only owner of the south half of section 30, all in township 5 north, of range 35, east, W. M. ADMITS that said deeds as recorded make it appear upon the record of said county that the said Jerusha Crab is not the owner of any interest therein, but this defendant avers and alleges the fact to be that the said deeds so recorded correctly represent and describe the true owners thereof.

VIII.

DENIES that the said Homer I. Watts or the said Marvel Watts or any of the other defendants have any arrangements between themselves, whereby either the said Homer I. Watts or the said Marvel

Watts are to be the real owners or any owners of said lands, or any interest therein, or to receive the benefits from said lands, except as tenants under the terms and conditions hereinafter set forth, and DENIES any knowledge or information sufficient to form a belief as to whether or not the deeds were procured in the form they were solely or at all for the purpose of enabling said Homer I. Watts to take the acknowledgment of said deeds without calling in a third or disinterested party, and therefore this defendant DENIES said allegations upon information and belief.

IX.

DENIES that the one-third interest of the said plaintiff, Jerusha Crab, in said property is of the value of more than \$3,000, or is of any value whatever, and DENIES that the said Jerusha Crab has any one-third or other interest in said property or any part thereof.

X.

ADMITS that after the death of the said Thomas Watts and [48] the recording of said deeds this defendant did take possession of the west half of the southeast quarter and the southeast quarter of the southwest quarter of section 32, and that the defendant Vernita Watts did go into possession of the south half of section 30, all in township 5 north, of range 35 east of the Willamette Meridian, but DENIES that they or either of them ousted the plaintiff, Jerusha Crab of the possession thereof, or that either this defendant or the said Vernita Watts is wrongfully claiming the sole ownership thereof.

ADMITS that they have ever since kept the sole possession of the same, except respecting the leases hereinafter mentioned, and ADMITS that these defendants have taken and received sums of money as rents and profits from said lands, in the manner and to the extent hereinafter set forth.

XI.

ADMITS that the said Vernita Watts is an infant under the age of eighteen years.

And further answering under oath, and answering plaintiffs' demand for a discovery, this defendant says on oath and alleges, that to the utmost and best and all of her knowledge, information and belief, neither of said deeds was a forgery, and therefore alleges upon information and belief that neither of said deeds was a forgery, and does further say that to the utmost of her knowledge, information and belief, both of said deeds were the free act of the said Thomas Watts, and therefore she does aver and allege upon information and belief that both of said deeds were the free act of the said Thomas Watts, and to the utmost of her knowledge, information and belief, does say that the name of the said Thomas Watts to said deeds was not written thereon by the said Thomas Watts, but that the name T. J. Watts to each of said deeds was written by the defendant, Homer I. Watts, in the presence of the said Thomas Watts and in strict accord with his directions and at his request, [49] and at a time when he was possessed of his full mental faculties and knew just what he was doing and why he was doing it, and that the said Thomas Watts knew and fully understood

the contents of said deeds and each of them at the time they were signed, and that the said Thomas Watts was in full possession and exercise of his mental faculties and was fully conscious of everything that was done respecting said deeds, and that the said Thomas Watts was at that time and in that condition directed the defendant, Homer I. Watts, to make his cross for him and did touch the pen while the cross was being made, in the presence of the defendant Homer I. Watts, and in the presence of G. M. Jonas, who did then and there, while in the exercise of full mental consciousness, and while possessed of his full mental faculties, acknowledge the said deeds to be his free and voluntary act and deed, and thereafter delivered the said deeds to the said Homer I. Watts and did instruct the said Homer I. Watts to record the same or to cause the same to be recorded and to be delivered to the parties entitled to receive them, and therefore, this answering defendant being without personal knowledge thereof, alleges this statement of facts to be true upon information and belief.

And further answering the plaintiffs' demand for discovery, this defendant says on oath and avers and alleges that the defendants Homer I. Watts and Marvel Watts, are operating the lands of this defendant as partners under a lease from this defendant to them, and that they are operating the lands of the said Vernita Watts as partners under a lease to them, and that by virtue of the agreement of lease and rental existing between this defendant and the said Homer I. Watts and Marvel Watts as partners,

and existing between the said Vernita Watts and Homer I. Watts and Marvel Watts as partners, the said Homer I. Watts [50] and Marvel Watts as partners pay rental for the use of said lands one-third of the crops produced from said lands, delivered at the warehouse on the railroad in sacks; said sacks are furnished by the said partnership, and in addition thereto the said partnership pays all insurance upon the crops so raised.

And further answering plaintiffs' demand for discovery this defendant says upon oath and avers and alleges the fact to be that of the lands standing in the name of this defendant, there has been but one crop harvested since the death of the said Thomas Watts; that during the year 1914 the tillable land on said premises was in summer-fallow and no crop was raised therefrom, that during the year 1916 the said land was in summer-fallow and no crop was raised thereon; that a crop of wheat was raised upon the said premises during the year 1915, and that the said crop so raised during said year consisted of 2,028 sacks of wheat, containing 4,201-20/60 bushels, and that the said crop was sold to the Preston-Shaffer Milling Company at Athena, Oregon, at 80 cents per bushel, and this defendant received as rental for the use of said lands the one-third thereof, to wit, the sum of \$1,120.35, and no more; and that of the lands belonging to Vernita Watts, crops were raised thereon during the years 1914 and 1915, but no crop was raised thereon during the year 1916, the said lands being in summer-fallow; that there was raised on said lands as the crop of 1914, 2,865 sacks of

wheat, containing 5,766-40/60 bushels, and that said wheat was sold to the Preston-Shaffer Milling Company for 67 cents per bushel, and the said Vernita Watts received as rental for the use of said lands during the year 1914 the sum of \$1,287.85, and that there was raised upon said lands so belonging to the said Vernita Watts during the year 1915, 1,085 sacks, containing 2,250-2/60 bushels, and the said [51] wheat was sold to the Preston-Shaffer Milling Company for 85 cents per bushel, and the said Vernita Watts received one-third thereof, to wit, \$637.50, and no more; and this answering defendant says that both the lands of this defendant and of the said Vernita Watts have been under lease to the said Homer I. Watts and Marvel Watts as partners ever since and for a long time prior to the death of the said Thomas Watts, and that the lands are now so under lease from this defendant and the said defendant, Vernita Watts, to the said partnership of Homer I. Watts and Marvel Watts.

And this defendant having fully answered plaintiffs' bill of complaint, now prays judgment and decree that the said bill be dismissed and that this defendant have and recover of and from the plaintiffs her costs and disbursements of this suit.

WILL M. PETERSON and
RALEY and RALEY,

Attorneys and Solicitors for the Defendant Jennie
Anderson Watts.

State of Oregon,
County of Umatilla,—ss.

On this 4th day of January, 1917, at Pendleton, in

Umatilla County and State aforesaid, before me personally appeared Jennie Anderson Watts, who being first duly sworn, deposes and says on oath, that she is one of the defendants named in the foregoing answer, that she has read the foregoing answer and knows the contents thereof, and that the same is true of her own knowledge, except as to such matters therein as are stated on information and belief, and as to those matters, she believes them to be true.

JENNIE ANDERSON WATTS. [52]

Subscribed and sworn to before me this 4th day of January, 1917.

[Seal]

J. H. RALEY,
Notary Public for Oregon.

My com. expires Mar. 16, 1917.

Service of within and foregoing answer by receipt of a certified copy thereof is hereby accepted and all further service thereof is hereby waived this — day of January, 1917.

JAMES A. FEE,
One of Attys. for *Complaint*.

Filed January 4, 1917. G. H. Marsh, Clerk. [53]

And afterwards, to wit, on the 25th day of January, 1918, there was duly filed in said court a petition for the appointment of a guardian *ad litem* for Vernita Watts, in words and figures as follows, to wit: [54]

*In the District Court of the United States for the
District of Oregon.*

**JERUSHA CRAB and JOHN CRAB, Husband and
Wife,**

Plaintiffs,

vs.

**HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS, and VERNITA
WATTS,**

Defendants.

**Petition for Appointment of Guardian Ad Litem for
Vernita Watts.**

Come now Marvel Watts, Jennie Anderson Watts and Vernita Watts, three or the defendants above named and respectfully represent to the Court as follows:

I.

That the said defendants, Marvel Watts and Jennie Anderson Watts, are husband and wife and are the parents of the defendant, Vernita Watts. That said defendant, Vernita Watts, as is alleged in paragraph numbered eleven (11) of the complaint of the plaintiffs on file herein, is an infant under the age of eighteen years; that she is over the age of fourteen years, to wit, of the age of fifteen (15) years; that she was born on the 8th day of April, A. D. 1901, and resides with her said parents, Marvel Watts and Jennie Anderson Watts, at Athena, Umatilla County, Oregon; that she has no general guardian.

II.

That Will M. Peterson, J. H. Raley and J. Roy Raley, attorneys at law, are residents and inhabitants of Pendleton, Umatilla County, Oregon, and are officers of this court. They have been retained by these defendants in this suit to represent them in this cause, and all of the defendants, except the said Vernita Watts, have caused their answers to be [55] filed herein, reference to which is hereby made for the further information of the Court, and particularly to show to the Court that these defendants are not adversely interested in the subject matter of this suit and that also the said attorneys of these defendants are not adversely interested to the said Vernita Watts or with the attorneys of the adverse parties.

At a conference of these defendants and their said attorneys, it has been decided that the said Will M. Peterson would be a suitable person in every way to be appointed guardian *ad litem* for the said defendant, Vernita Watts, and he has signified his willingness to accept said appointment, if appointed by the Court; and if it should not be agreeable to the Court to make the said appointment, the said J. H. Raley or the said J. Roy Raley may be appointed, if either one of them should appear to the Court to be more suitable.

III.

That personal service of subpoena has been heretofore made, in the above-entitled court and cause upon the said Vernita Watts, as well as upon the other defendants herein, and the said defendant,

Vernita Watts, is very materially interested in the subject matter of the said suit and, for the further information of the Court, the complaint of the plaintiffs in this cause is now hereby referred to for the purpose of familiarizing the Court with the necessity of the appointment of a guardian ad litem for the said defendant, Vernita Watts.

WHEREFORE, your petitioners pray that Will M. Peterson of Pendleton, Oregon, may be appointed guardian *ad litem* for the defendant, Vernita Watts, to appear and defend said suit on her behalf.

Dated this the 22 day of January, A. D. 1917.

MARVEL WATTS,
JENNIE ANDERSON WATTS,
VERNITA WATTS,

Petitioners. [56]

State of Oregon,
County of Umatilla,—ss.

I, Marvel Watts, after being first duly sworn, say that I am the father of Vernita Watts, one of the defendants above named; that I am also one of the defendants above-named; that I have read the foregoing petition and verily believe the contents thereof to be true, that the signatures of the defendants, Vernita Watts and Jennie Anderson Watts, to the foregoing petition were written by them in my presence and are genuine.

MARVEL WATTS.

Subscribed and sworn to before me on this 22 day of January, A. D. 1917.

[Seal]

B. B. RICHARDS,
Notary Public for Oregon.

My commission expires Mch. 12, 1917.

State of Oregon,
County of Umatilla,—ss.

I, Will M. Peterson, hereby certify that I have read the foregoing petition for appointment of guardian *ad litem*; that I verily believe the contents thereof to be true; that I will accept the appointment of guardian *ad litem* for Vernita Watts, one of the defendants above named, if I am appointed by the Court, and will thereupon appear and defend said suit on her behalf to the best of my ability.

WILL M. PETERSON. [57]

Subscribed and sworn to before me on this 23d day of January, A. D. 1917.

[Seal]

FRANCES WEBER,
Notary Public for Oregon.

My commission expires Dec. 10, 1919.

Filed Jan. 25, 1917. G. H. Marsh, Clerk of United States District Court for the District of Oregon.

[58]

And afterwards, to wit, on Thursday, the 25th day of January, 1917, the same being the 69th judicial day of the regular November, 1916, term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit:

[59]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS, and VERNITA
WATTS,

Defendants.

**Minutes of Court—January 25, 1917—Order
Appointing Guardian Ad Litem.**

The petition of Marvel Watts, Jennie Anderson Watts, and Vernita Watts, three of the defendants above named, for the appointment of a guardian *ad litem* for the defendant, Vernita Watts, now comes on to be heard; and it appearing to the Court that the said defendant, Vernita Watts, is an infant under the age of eighteen years, but over the age of fourteen years, to wit, of the age of about fifteen (15) years and that she has no general guardian; that the said defendants, Marvel Watts and Jennie Anderson Watts, are husband and wife and are the parents of the said defendant, Vernita Watts. That Will M. Peterson of Pendleton, Umatilla County, Oregon, has signified his willingness to accept the appointment of guardian *ad litem* for the said Vernita Watts, and that he is a competent and responsible person, an attorney of this Court, and is the choice of said defendants as said guardian; and

the Court being advised in the premises:

It is now therefore ordered that the said Will M. Peterson be, and he is hereby, appointed guardian *ad litem* for the said defendant, Vernita Watts, and is authorized and directed to appear and defend said suit on her behalf and is hereby given ten days from date hereof in which to [60] answer the complaint of the plaintiffs on file herein.

Dated this 25th day of January, A. D. 1917.

R. S. BEAN,
District Judge.

Filed Jan. 25, 1917. G. H. Marsh, Clerk U. S. District Court for Oregon. [61]

And afterwards, to wit, on the 2d day of February, 1917, there was duly filed in said court, an answer of Vernita Watts, in words and figures as follows, to wit: [62]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Separate Answer of Vernita Watts, a Minor, by Will M. Peterson, Her Guardian Ad Litem.

Comes now the defendant, Vernita Watts, by Will M. Peterson, her duly appointed guardian *ad litem*, and answering plaintiff's bill of complaint filed herein, for herself and for herself alone, DENIES, ADMITS, AVERS and ALLEGES as follows:

I.

ADMITS paragraph I of said bill of complaint, and the whole thereof.

II.

ADMITS paragraph II of said bill of complaint, and the whole thereof.

III.

And answering paragraph III of said bill of complaint this answering defendant ADMITS that said Thomas Watts died intestate on the 20th day of April, 1914, but DENIES that at the date of his death he was the owner of the west half of the southeast quarter, or the southeast quarter of the southwest quarter of section 32, township 5 north, range 35 E., W. M., or any part thereof, or was the owner of the south half of section 30, township 5 north, range 35 east, W. M., or of any portion thereof, and AVERS the fact to be that at the time of the death of the said Thomas Watts on the 20th day of April, 1914, this defendant, Vernita Watts, was the owner of the south half of section 30, in township 5 [63] north, range 35 east, W. M., and another of these defendants, to wit, Jennie Anderson Watts, was the owner of the west half of the southwest quarter, and

the southeast quarter of the southwest quarter of section 32, in township 5 north, range 35 east, W. M., subject only to a life interest existing in the said Thomas Watts at the time of his death, and AVERS the fact to be that upon the death of the said Thomas Watts the said Jennie Anderson Watts became the absolute owner in fee simple of the said last-described tracts of land, freed from the said life estate of the said Thomas Watts.

IV.

ADMITS that the estate of the said Thomas Watts has been fully administered upon in the County Court of the State of Oregon for Umatilla County, and said administration has been duly closed and the administrator discharged.

V.

And answering paragraph V of said bill of complaint, this answering defendant ADMITS that for a considerable time prior to the death of the said Thomas Watts he was old and feeble in body and was sick in body, but DENIES that the said Thomas Watts was at all feeble in mind or that he was at all mentally weak or was at all easily influenced, or was at all incapable of doing business, or was at all not of intelligent comprehension of his affairs, or was at all not of a conscious or intelligent making or disposition of his property among those entitled to his bounty, and AVERS and ALLEGES the fact to be that at all times prior to and up to two days prior to the date of the death of the said Thomas Watts he was strong and firm in mind and was mentally capable of doing business, and was fully possessed

of an intelligent comprehension of his affairs, and was thoroughly competent to make a conscious and intelligent disposition of his property [64] among those entitled to his bounty and otherwise; and DENIES that shortly before the death of the said Thomas Watts, or at any time before or at all or while Thomas Watts was on his deathbed or suffering from his last sickness, or so incapacitated as stated in plaitniff's bill of complaint, or at all or at any other time, this defendant conspired with either or any of the other defendants or anyone else, or at all conspired in any manner to cheat or defraud the plaintiff, Jerusha Crab, or anyone else, out of her interest in her father's estate, or to secure a deed purporting to be a deed from said Thomas Watts to the said Jennie Anderson Watts for the west half of the southeast quarter, or the southeast quarter of the southwest quarter of section 32, township 5 north, of range 35 east of the Willamette Meridian, or any part thereof, or to secure or procure a deed to the said Vernita Watts for the south half of section 30, township 5 north, range 35 east, W. M., or any part thereof, or at all, or that this defendant, with the other defendants or either or any one of them, in any manner either did conspire together or did at all influence or induce the said Thomas Watts to make said deeds or either thereof; ADMITS that the lands described included all of the lands of the said Thomas Watts, except 80 acres, and ADMITS that said 80 acres was barely sufficient in value to pay for the mortgage which existed and to pay the necessary funeral expenses and ex-

penses of administering the estate, and this defendant DENIES that she did or that any of the defendants with her knowledge did in any manner procure a deed purporting to be executed by the said Thomas Watts, giving to the said Jennie Anderson Watts the said west half of the southeast quarter, or the southeast quarter of the southwest quarter of said section 32, or any part thereof, or to the defendant Vernita Watts [65] the south half of section 30, or either or any part thereof; ADMITS that this defendant caused said deeds to be recorded in the Deed Records of Umatilla County, Oregon, and ADMITS that said signatures to said deeds were not in the handwriting of said Thomas Watts, but purported to have been signed by making his mark, and this answering defendant alleges that she was not present at the time the said deeds were signed or executed, but is informed and believes and therefore alleges upon information and belief that the said deeds were signed by the said Thomas Watts by making his mark.

VI,

DENIES that said deeds or either of them was wholly or at all without any valuable or other consideration, and avers and alleges the fact to be that Jennie Anderson Watts was and is a daughter-in-law of the deceased, and this defendant Vernita Watts was and is a granddaughter of the deceased, Thomas Watts, and that for more than five years prior to the date of the death of the said Thomas Watts he had lived with and made his home with Jennie Anderson Watts and this defendant and the

defendant Marvel Watts, and during all of said time this defendant and the defendant Jennie Anderson Watts had cared for and looked after the welfare and comfort of the said Thomas Watts, and this defendant avers and alleges the fact to be that said deeds and each of them were executed and delivered for a good and valuable consideration, and this defendant further says that she has no personal knowledge of the immediate conditions under which the said deeds were executed, and therefore DENIES upon information and belief that the said deeds, or either of them, were at all secured from the said Thomas Watts when he was not fully conscious or was mentally incapacitated from making such conveyances, or that they were, or either of them was obtained [66] from him either by or through fraud or deceit or undue influence, or by taking advantage of his mental or physical condition, or that said deeds were secured or obtained when the said Thomas Watts was sick at the home of the defendant, Homer I. Watts, or when the only other person present was a witness secured by said defendant, Homer I. Watts, and DENIES on information and belief that said deeds or either of them were not the conscious or intelligent act of the said Thomas Watts, or that he had no intention or purpose of disposing of the said property or conveying it as set forth in said deeds, and DENIES that in equity or good conscience or at all or for any reason said deeds or either of them was fraudulent or void or of no effect, and this answering defendant AVERS the fact to be that she is informed and believes that

the said deeds and each of them were duly and regularly executed and delivered by the said Thomas Watts at a time when he was mentally capable in every way of making, executing and delivering said deeds, and that the said deeds and each of them are the conscious and intelligent act of the said Watts and that the said deeds, and each of them, are valid and in full force and effect, and therefore this defendant alleges upon information and belief that the said deeds and each of them were so executed by the said Thomas Watts, and are valid and subsisting conveyances of the said lands.

VII.

DENIES that the said Jerusha Crab is the owner in equity or otherwise or at all, by virtue of inheritance from her father or otherwise, of an equitable one-third interest or of any interest at all in all or any of the real property described in said complaint, and DENIES that she is a tenant with the said Homer I. Watts or Marvel Watts, or either of them, and DENIES that the said Homer I. Watts or the said Marvel [67] Watts or either of them are the owners of the other two-thirds of said lands, or of any interest whatever in or to said lands, and avers and alleges the fact to be that Jennie Anderson Watts is the sole and only owner of the west half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, and that this defendant is the sole and only owner of the south half of section 30, all in township 5 north, of range 35 east, W. M. ADMITS that said deeds as recorded make it appear upon the record of said county that

the said Jerusha Crab is not the owner of any interest therein, but this defendant avers and alleges the fact to be that the said deeds so recorded correctly represent and describe the true owners thereof.

VIII.

DENIES that the said Homer I. Watts or the said Marvel Watts or any of the other defendants have any arrangements between themselves, whereby either the said Homer I. Watts or the said Marvel Watts are to be the real owners or any owners of said lands, or any interest therein, or to receive the benefits from said lands, except as tenants under the terms and conditions hereinafter set forth, and DENIES any knowledge or information sufficient to form a belief as to whether or not the deeds were procured in the form they were solely or at all for the purpose of enabling said Homer I. Watts to take the acknowledgment of said deeds without calling in a third or disinterested party, and therefore this defendant DENIES said allegations upon information and belief.

IX.

DENIES that the one-third interest of the said plaintiff, Jerusha Crab, in said property, is of the value of more than \$3,000, or is of any value whatever, and DENIES that the said Jerusha Crab has any one-third interest or any other interest at all in said property or any part thereof. [68]

X.

ADMITS that after the death of the said Thomas Watts and the recording of said deeds Jennie Anderson Watts did take possession of the west half of

the southeast quarter and the southeast quarter of the southwest quarter of section 32, and that this defendant, Vernita Watts, did go into possession of the south half of section 30, all in township 5 north, of range 35 east of the Willamette Meridian, but DENIES that they or either of them ousted the plaintiff, Jerusha Crab, of the possession thereof, or that either this defendant or the said Jennie Anderson Watts is wrongfully claiming the sole ownership thereof. ADMITS that they have ever since kept the sole possession of the same, except respecting the leases hereinafter mentioned, and ADMITS that these defendants have taken and received sums of money as rents and profits from said lands, in the manner and to the extent hereinafter set forth.

XI.

ADMITS that the said Vernita Watts is an infant under the age of eighteen years, and AVERS the fact to be that this defendant, Vernita Watts, is now a minor and is of the age of about fifteen years, and now is and at all times herein mentioned was a resident of the county of Umatilla and State of Oregon; that on the 25th day of January, 1917, and prior to the filing of this answer in this cause, an order was duly given, made and entered by one of the Judges of the above-entitled court, whereby the above-named Will M. Peterson was appointed the guardian *ad litem* of said minor for the purpose of defending the interests of the said minor in this cause, and that said order was so given, made and entered upon due and regular application having been made therefor, and the said Will M. Peterson is now the

duly and regularly [69] appointed, qualified and acting guardian of the minor defendant, Vernita Watts.

XII.

And further answering plaintiff's demand for a discovery, this defendant says and alleges, that to the utmost and best and all of her knowledge, information and belief, neither of said deeds was a forgery, and therefore alleges upon information and belief, that neither of said deeds was a forgery, and does further say that to the utmost of her knowledge, information and belief, both of said deeds were the free act of the said Thomas Watts, and therefore she does aver and allege upon information and belief that both of said deeds were the free act of the said Thomas Watts, and to the utmost of her knowledge, information and belief, does say that the name of the said Thomas Watts to said deeds was not written thereon by the said Thomas Watts, but that the name T. J. Watts to each of said deeds was written by the defendant, Homer I. Watts, in the presence of the said Thomas Watts and in strict accord with his directions and at his request, and at a time when he was possessed of his full mental faculties and knew just what he was doing and why he was doing it, and that the said Thomas Watts knew and fully understood the contents of said deeds and each of them at the time they were signed, and that the said Thomas Watts was in full possession and exercise of his mental faculties and was fully conscious of everything that was done respecting said deeds, and that the said Thomas Watts at that time and in that

condition directed the defendant, Homer I. Watts, to make his cross for him and did touch the pen while the cross was being made, in the presence of the defendant Homer I. Watts, and in the presence of G. M. Jonas, who did then and there, while [70] in the exercise of full mental consciousness, and while possessed of his full mental faculties, acknowledge the said deeds to be his free and voluntary act and deed, and thereafter delivered the said deeds to the said Homer I. Watts and did instruct the said Homer I. Watts to record the same or to cause the same to be recorded and to be delivered to the parties entitled to receive them, and therefore this answering defendant being without personal knowledge thereof, alleges this statement of facts to be true upon information and belief.

XIII.

And further answering plaintiff's demand for discovery, this defendant says and avers and alleges that the defendants, Homer I. Watts and Marvel Watts, are operating the lands of this defendant as partners under a lease from this defendant to them, that they are operating the lands of the said Jennie Anderson Watts as partners under a lease to them, and by virtue of the agreement of lease and rental existing between this defendant and the said Homer I. Watts and Marvel Watts as partners, and existing between the said Jennie Anderson Watts, and Homer I. Watts and Marvel Watts as partners, the said Homer I. Watts and Marvel Watts as partners pay as rental for the use of said lands one-third of the crops produced from said lands, delivered at the

warehouse on the railroad in sacks; said sacks are furnished by the said partnership, and in addition thereto, the said partnership pays all insurance upon the crops so raised.

XIV.

And further answering plaintiff's demand for discovery, this defendant says and avers and alleges the fact to be that of the lands standing in the name of Jennie Anderson Watts there has been but one crop harvested since the death of the said Thomas Watts; that during the year 1914 the tillable [71] land on said premises was in summer fallow and no crop was raised therefrom; that during the year 1916 the said land was in summer-fallow and no crop was raised thereon; that a crop of wheat was raised upon the said premises during the year 1915, and that the said crop so raised during said year consisted of 2,028 sacks of wheat, containing 4,201-20/60 bushels, and that the said crop was sold to the Preston Shaffer Milling Company at Athena, Oregon, at 80 cents per bushel, and this defendant received as rental for the use of said lands the one-third thereof, to wit, the sum of \$1,120.35, and no more; and that of the lands belonging to this defendant, crops were raised thereon during the years 1914 and 1915, but no crop was raised thereon during the year 1916, but said lands being in summer-fallow; that there was raised on said lands as the crop of 1914, 2,865 sacks of wheat, containing 5,766-40/60 bushels, and that said wheat was sold to the Preston-Shaffer Milling Company for 67 cents per bushel, and this defendant received as rental for

the use of said lands during the year 1914 the sum of \$1,287.85, and that there was raised upon said lands so belonging to this defendant during the year 1915, 1085 sacks, containing 2,250-2/60 bushels, and the said wheat was sold to the Preston Shaffer Milling Company for 85 cents per bushel, and this defendant received one-third thereof, to wit, \$637.50, and no more; and this answering defendant says that both the lands of this defendant and of the said Jennie Anderson Watts have been under lease to the said Homer I. Watts and Marvel Watts as partners ever since and for a long time prior to the death of the said Thomas Watts, and that the lands are now so under lease from this defendant and the said defendant, Jennie Anderson Watts, to the said partnership of Homer I. Watts and Marvel Watts.

And this defendant having fully answered plaintiff's [72] bill of complaint, but not under oath because made by guardian *ad litem*, now prays judgment and decree that the said bill be dismissed and that this defendant have and recover of and from the plaintiff her costs and disbursements of this suit.

WILL M. PETERSON and
RALEY and RALEY,

Attorneys and Solicitors for the Defendant Vernita
Watts.

State of Oregon,
County of Umatilla,—ss.

On this 30th day of January, 1917, at Pendleton, Umatilla County and State aforesaid, before me personally appeared Will M. Peterson, who being first duly sworn, deposes and says on oath, that he is

the duly appointed, qualified and acting guardian *ad litem* of Vernita Watts, a minor, the defendant named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that he has no personal knowledge of the matters set forth in said answer, but upon information furnished him, believes the same to be true and therefore, as guardian *ad litem* for the defendant, makes oath upon information and belief that he believes the said matters therein stated are true.

WILL M. PETERSON.

Subscribed and sworn to before me this 30th day of January, 1917.

[Seal]

J. H. RALEY,

Notary Public for Oregon.

My commission expires March 16, 1917.

Service by copy of the within answer is hereby accepted at Pendleton, Oregon, this — day of Janry., 1917.

JAMES A. FEE,

One of Atty. for *Complaint*.

Filed Feb. 2, 1917. G. H. Marsh, Clerk U. S. District Court for Oregon. [73]

And afterwards, to wit, on the 25th day of March, 1918, there was duly filed in said court an opinion, in words and figures as follows, to wit: [74]

*In the District Court of the United States for the
District of Oregon.*

No. 7340.

JERUSHA CRABB and JOHN CRABB, Hus-
band and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS, and VERNITA
WATTS,

Defendants.

Opinion.

JAMES A. FEE and A. S. BENNETT, for
Plaintiffs.

WILL M. PETERSON and RALEY & RA-
LEY, for Defendants.

WOLVERTON, District Judge:

On April 14, 1914, Thomas J. Watts signed two deeds by his mark, one purporting to convey to Jen-
nie Anderson Watts 120 acres of land, and the other
to convey to Vernita E. Watts 320 acres, all in Uma-
tilla County, Oregon. The instruments were ac-
knowledged before Homer I. Watts, notary public.
The plaintiff Jerusha Crabb, who is a daughter of
Thomas J. Watts, and her husband, John Crabb,
feeling themselves aggrieved, are seeking by this

controversy to have these deeds annulled, on the grounds: First, that the grantor was at the time incapacitated to make the deeds; and, second, that he was induced to make them through undue influence exerted by the defendants [75] Homer I. Watts, Marvel Watts, Jennie Anderson Watts, and Vernita Watts. Homer and Marvel are the sons of Thomas J. Watts, and are his only children and heirs-at-law except the plaintiff Jerusha Crabb. Jennie Anderson Watts is the wife of Marvel, and Vernita is their daughter.

Thomas J. Watts died intestate, on April 20th, six days after the deeds were executed. He was in his 83d year at the time of his death, and had grown very feeble, both physically and mentally. When in health and vigor, he was a man of positive habits, and asserted his own judgment in his dealings with others. The last few years of his life, when his health had become somewhat impaired, he leased his lands to his sons Homer and Marvel, on shares, and they accounted to him for his share in the crops. Marvel, perhaps generally, sold his grain, and either passed the proceeds to him or to the bank to his account. He also paid his taxes and transacted other business for him when he was away. There was therefore this fiduciary relation existing between Homer and Marvel Watts and the deceased.

Deceased was twice married. Jerusha Crabb is the daughter of the first wife, and Homer and Marvel are the sons of the second, making them half-brothers of Jerusha.

When she was six years old, Jerusha went to live

with her uncle, Marvel Watts, and shortly afterward—within a year—the deceased married a second time. Jerusha continued to live with her uncle until she was [76] married to Crabb. In the meantime she saw and visited with her father and he with her occasionally. When her uncle died, she shared in his estate, finally realizing therefrom \$10,000, less a considerable expense in obtaining the money. The net amount that she finally received was around \$9,000. After her marriage, she kept in touch with her father, through meeting him occasionally and correspondence, down to the time when the deceased and his second wife were divorced, which was in the year 1908. After that, the deceased visited with Jerusha frequently, and at times he made his home with her, extending over periods of from a week to three months. In the latter three years of his life, he wrote to her very frequently, and for some periods as often as once every week. Generally, however, after his divorce, he made his home with his son Marvel, in Athena, Oregon. Some of the time he was in Southern California, on account of his health. At other times he stopped in Spokane, and with Mr. Skelton, near Kennewick, Washington. In this way he went about as he desired, having practically retired from active business.

In the fall of 1913, late fall perhaps, the deceased went to Santa Ana, Southern California, and remained there until the latter part of February, 1914. His health failing, so that he could not care for himself as he wished, he wrote to Jerusha, saying in effect that some of them would have to come after

him. Mrs. Crabb wrote to her brother Marvel about it. About the same [77] time Page, a friend of deceased, wired Marvel to come for him and bring him home. Marvel went for his father, and brought him back. He thinks they returned the latter part of February or first of March; he was not able to fix the date. The deceased was taken to Marvel's home. Marvel is of the impression that some time later his father received a letter from Jerusha, but is not sure about it. At least, he did not read the letter, and did not know its contents. Mrs. Crabb makes no mention of having written such a letter.

Marvel says that on March 16th or 17th he took "father up there (to Jerusha's) at my own father's request." Jerusha says it was the 17th that they came.

The Crabbs live near St. John, Washington. When the deceased came there, he was quite feeble, and unable to move about without support. The next morning, or the day after he arrived at his daughter's home, in talking about his business and property, he told her that he had made a will, and requested her to send for it, giving as his reason that he "didn't want it; it didn't suit him." The daughter had no previous knowledge of his having made a will. She declined to send for the will as requested. Deceased then asked her husband to send for it, and he also declined. He then requested W. D. Parker, a neighbor, to write for it. Parker wrote to Mr. Fay Le Grow, cashier of the First National Bank of Pendleton, who had the custody of the document, to send it up to the old gentleman. This was on the 24th of

March. The will was forwarded, and was received by the [78] deceased on the 27th. Watts signed a confirmatory letter of that date, and dated the same in his own hand. When the will was received, without opening the envelope in which it was sealed, he requested his daughter to put it away, which she did. Shortly afterwards—a few days—he asked her to get the will for him. He then opened it, and read it, and asked his daughter to burn it. This she declined to do; but, at the suggestion of Viola Crabb (now Wheeler), a daughter of Mrs. Crabb, he put the will in the stove himself, and it was burned. Viola opened the stove for him, and helped him up, and he dropped the paper in.

Unknown to deceased, Mrs. Crabb read the will over his shoulder. It bore the date October 25, 1910, and gave to Mrs. Crabb \$200, and the remainder of the property to Homer and Marvel Watts, share and share alike. The record shows that deceased had executed two other wills prior to that one. One of them was executed in 1899. By this will he gave to his wife the place he had in Athena, and 160 acres of land besides, some money, perhaps \$100, to Mrs. Crabb, and the remainder of his property to his three boys, to be divided equally among them. There were then three sons living. The other will was executed November 25, 1905. By that he gave to Jerusha \$10, and the remainder of his property to his wife and his two sons, Marvel and Homer. The bequests in these several wills seemed to be in accord with declarations [79] testator had made from time to time to his friends and persons of his acquaintance, run-

ning down to near the time when he went to his daughter's.

When the will was destroyed, deceased gave expression to his thought, "Now it is done, and they will all share equal." This is what Mrs. Wheeler understood him to say. Mrs. Crabb understood him to say, "Now it is done," with a laugh, "you shall have your share equal." These were the only two witnesses to the incident.

On the 3d of April, Mr. Watts was taken seriously ill, and Dr. McIntyre was called. His trouble was sciatica in the right leg, and bladder affection. Dr. Mitchell was called into consultation, and an anesthetic was administered before he was relieved. Dr. McIntyre is not certain as to the day the consultation took place and the relief had, but is of the impression that it was not long after he was first called. The deceased was left in a greatly weakened condition physically, and thereafter had to be taken from and put to bed; he was unable to feed himself, and, to a certain extent, had lost the use of his hands.

Marvel, with his mother, wife and daughter, went up from Athena to visit his father, on the 3d of April. This was on Friday. The mother and daughter returned on Sunday, and Marvel and his wife remained until Monday. Considerable conversation was had among them and with the old gentleman. This will be referred to later. [80]

Mrs. Crabb told Marvel, soon after his arrival, that the old gentleman had destroyed his will. Marvel is of the belief that she said it was destroyed that morning, the 3d; but Mrs. Crabb denies that she

told him it was destroyed that morning, for, she says, it was destroyed some days before—Monday, Tuesday or Wednesday before.

Marvel went back to the Crabbs' place on the Friday following, being the 10th of April, and brought his father down to Athena the next day, the 11th. The father was carried from his bed to an automobile, and taken to the railroad station, some 7 or 8 miles distant, where he was put on an improvised stretcher or cot, and carried in the baggage-car of the train to Athena, a distance of some 140 miles. On his arrival at Athena he was taken on a dray to Homer's home. Mrs. Carden was called the next day to nurse him. On Sunday his divorced wife came over from Walla Walla to see him.

Now, we come to the incident of the execution of the deeds.

Homer relates that he heard part of the conversation between his father and mother; that his father wanted to provide further for his mother, but that she finally said: "Now, Tom, I don't know that I care about the property at all. The children that have made it are entitled to it, and I would just let it go that way." [81]

Homer further relates that, on the evening his father came to his (*Homer's*) home, he had a talk with him, and, after alluding to the destroying of the will, his father said: "I have made up my mind that I am going to do with my property as I suggested some time ago, that is, going to give a part of it to your mother, and I am going to provide for Vernita, because she is a cripple, and Marvel's wife,

and the balance of it I am going to leave to pay up the debts, and I hope you children will all get good friends, because you all have enough property. Now, let property not divorce you children any longer." Homer further relates that, on Sunday evening or Monday morning, his father directed him how to made the deeds, and then said to him: "Now, Homer, Jerusha understands how the property is to go and why she is not getting any of it, because it has been a mutual understanding that she got her property from Uncle Marvel; and Marvel will have no objections at all, because it goes into the family. * * * I think you children can get along better than you have in the past." Homer replied, "You know I have made my way so far, and I am going to make it the rest of the way; but * * * I would prefer to have somebody else write the deed." To this the father said, "Now, Homer, you are the only one that is going to cause a lawsuit in this matter, and I want you to attend to it for me, and attend to it right." And Homer said, "I will not cause a lawsuit in this matter, if I don't get a pleasant look from this [82] time out. * * * If you don't want any trouble, I will cause none." Further on he quotes his father as saying, "I have made up my mind what I am going to do with my property. * * * Now, Homer, I am not going to leave any of you anything, so you will have nothing to law about."

On Tuesday morning, about 11 o'clock, Homer took his father out in his automobile for a ride. They stopped at the drug-store in the town to get some medicine, and then proceeded on to the town of

Adams, about five miles distant. On returning to the house, Homer testifies that his father said, "Do you care if you drive me out to the ranch?" They started, but having driven part way out, his father told him that he would not be able to stand the ride, and so they returned to the house again. He was taken in the house, given something to eat while sitting in a chair, and then put on the bed. Homer then went to his office and drew the deeds, and returned to the house with Guy Jonas. Mrs. Carden, the nurse, had, either at that time or previously, signified her intention of going to her own home on some errand, and Homer told his wife to take her home in the car. This she did, and then took a ride, returning in 45 minutes or an hour later. Shortly after they left the house, Homer says, his father asked to be taken up. He and Jonas took him out in the sitting room, and set him in a chair. The deeds were then read to [83] him, and he signed them by making his mark; the pen being in the hands of Homer, the old gentleman touching it as the mark was made. The three persons—Homer, his father and Jonas—were all that were in the house at the time.

The old gentleman died the Monday following, at the hour of about eight o'clock in the morning, and the deeds were recorded at 11:20 and 11:25 o'clock of the same forenoon.

This is the story which terminated in the execution and recording of the deeds.

Now, to return to the time that the deceased was at the home of the Crabbs, in order to ascertain his

predisposition in disposing of his property after burning the will. He talked a great deal about his property before destroying the will, and was given to much repetition of what he had previously said on the subject, indicating that he wanted his daughter to share with the boys in what he had. At times he would shed tears, and was unable to control his feelings. After the will was destroyed, he seemed to be more resigned. When Marvel came to take him away, he at first did not want to go, but became reconciled to going. Mr. and Mrs. Crabb were also not willing that he should be taken away, but yielded, in consideration that it was thought that he would be better taken care of in Athena. The care that was taken of him while at the Crabbs' was not essentially [84] different from that accorded to him at Homer's home, except that a nurse attended him at the latter place. The Crabbs, however, were willing to provide a nurse for him, and would have done so if he had not been taken away. Marvel went to the Crabbs' with the express purpose of taking him away, and dominated the situation. He was asked: "Now, you insisted, then, on taking him away, did you?" To which he answered, "Why, I went up after him, yes. Q. What say? A. I went up after him. Q. Well, I say you insisted on taking him away? A. Well, I did take him away."

Dr. McIntyre thought it best that he be not removed, but yielded, as did Mr. and Mrs. Crabb, on the representation that he would be better taken care of in Athena.

The deceased seemed to be apprehensive that

Marvel had designs inimical to his (deceased's) wishes respecting his property. This appears from the conversations that took place between him and Marvel on the evening before and the morning on which they started for Athena. Two of these conversations were overheard by Mrs. Wheeler, and in the main by Mrs. Crabb, and the other by both, and by Mr. Crabb. In the first conversation he said, in effect, that he would not sign any papers; that if Marvel was taking him away to sign any papers, he would not go, and that he wanted the property to be divided equally among them. To this Marvel answered, "It will be as you want it." Mrs. Crabb's rendition of the [85] conversation is, that her father said: "Marvel, if you have come after me to take me down to make any papers, or to sign any papers, I won't go e'er a step." To this Marvel answered, "Father, we have no such intention as that. It shall be divided equal. I won't influence you to sign anything," or words to that effect. At another conversation, while Mrs. Crabb was in the kitchen, she and her daughter overheard her father ask Marvel if he would see that the property was divided equally between "us three, Marvel, Homer and myself." And Marvel said he would see that it was done, and asked his father, "What makes you worry that way," or "about it," or something that way. A little later Mr. Crabb was called in, and the old man took him by the hand, and said, "John. you and Jerusha has been so kind to me, on my word of honor, I want Jerusha to have her one-third of the property, and I want it divided equal." Then they

took him out to the automobile, and he was taken to the station.

Marvel denies that these conversations took place, but I am impressed with the truth of the statements.

Apart from the testimony above alluded to, Parker, a disinterested witness, relates that at the time the deceased asked him to write for the will, he told him (Parker) that he was not satisfied with it (the will), and said that Jerusha was his child, the same as the boys were, and he wanted her to have part of his [86] property.

Much has been said about the condition of deceased's mind from the time that he was taken ill until he was taken away from the home of the Crabbs. Dr. McIntyre's statement for this is as follows: "I don't believe, if he had been left to his own initiative, that he could have very well planned out anything that was at all complicated, at any rate." The doctor was of the opinion, from the time he first saw him, that he could not survive his illness.

Dr. Sharp, who attended the deceased after he was taken to Homer's, says that he was very feeble, weak, and exhausted; that he seemed to have had a general breakdown, but seemed to be perfectly rational, and so continued up to about Thursday or Friday. From that time on he was delirious.

Dr. McIntyre, from the time he was called in to see deceased at the Crabbs', administered a strong stimulant, consisting of strychnine, under which he would revive and seem brighter until its effects were lost.

The same stimulant was continued under Dr. Sharp's treatment. On Wednesday or Thursday the

patient began to show symptoms of pneumonia, which continued to develop until the time of his death. For this trouble an expectorant was administered.

Mrs. Carden, the nurse, says the deceased was rational up to the day he took the automobile ride, [87] and perhaps a day or two subsequently; that he seemed pretty bright on Sunday, but that she never talked much with him, and could not say whether he was in a condition to transact important business.

Other witnesses, neighbors of his, seemed to think that his mind was not impaired.

Several witnesses have given evidence to the effect that Watts had from time to time given expression to his attitude respecting the final distribution of his property, and that, generally, his thought seemed to be that while his wife was alive she should be provided for, to the extent that she should have plenty to supply her wants; that, Jerusha having obtained from her uncle Marvel a considerable sum, she was provided for substantially in accord with what his sons would have by an equal division of the estate between them, and that he was solicitous that they should have the residue of his estate after his debts were paid. But among all the witnesses produced, only two have given evidence of any expression of Watts that would seem in the least to indicate that it was his intention to give any of his property to Marvel's wife and daughter; that is, other than what Homer has to say on the subject. Marvel says that, along in the summer, before his father went to California, while they were out at the ranch, his father

asked him what he thought about remembering his (Marvel's) wife, and that he replied, [88] "Well, Daddy, it is just up to you. Do as you like." And Taylor testified that the old gentleman indicated to him that he was not satisfied with his will (the one that was destroyed), and in that connection said that "Marvel's wife would crawl on her hands and knees up the stairs to wait on him."

There is some testimony to the effect that the deceased had gotten the idea that Homer was not treating him as he should; that he did not come to see him as he thought he ought. Taylor speaks of this, and Dr. Sharp gives expression to some such idea.

Another matter that should be mentioned: When Homer took his father out for the ride on the day the deeds were executed, and father was adverse to going, but consented finally. Homer, himself, testifies as to this, as follows:

"I took him down town the one time. Q. Just the one time? A. Yes; against his wishes. Q. What say? A. Against his wishes. Q. You took him against his wishes, you say? A. Yes."

Dr. Sharp advised against it, and thought he ought not to go; that, in his weakened condition, he was not able to stand it.

The legal principles involved are not intricate, nor difficult of application. Where deeds are obtained by the exercise of undue influence over a man whose mind has ceased to be a safe guide to his actions, it is [89] against conscience for him who has obtained them to derive any advantage therefrom. *Harding v. Handy*, 11 Wheat. 103, 125. But it is not neces-

sary, in order to secure the aid of equity, to prove that the grantor was at the time insane, or in such a state of mental imbecility as to render him entirely incapable of executing a valid deed. It is sufficient to show that, from sickness and infirmity, he was at the time in a condition of mental weakness, and that there was gross inadequacy of consideration for the conveyance. From such circumstances, imposition or undue influence will be inferred.

Allore v. Jewell, 94 U. S. 506, 510.

A fiduciary relation existing between the grantor and those concerned in securing a benefit under the terms of the grant raises a presumption against validity, and casts the burden of establishing good faith upon the person asserting the regularity of the transaction. *Clough v. Dawson*, 69 Or. 52, 60; *Jenkins v. Jenkins*, 66 Or. 12, 17. And the secrecy with which the transaction is accomplished often furnishes a badge of fraud.

Wolf v. Harris, 57 Or. 276, 279.

The deeds in question were in reality executed *causa mortis*. It is hardly probable that any one of the participants engaged in the consummation of their execution believed that the father could survive for more than a short time. The deeds purport to have been given for the consideration of love and affection, [90] and one dollar.

While it may be conceded that the deceased was possessed of sufficient mentality for the final disposition of his property among his kindred, yet it cannot be denied that he was in a greatly weakened and debilitated condition, both physically and men-

tally. Dr. Sharp, his old physician, says: "He was very feeble, and weak, and exhausted," and had suffered a general breakdown. It is not doubted that a person in such a condition is readily susceptible to extraneous influences.

Now, we have the fact satisfactorily proven that he burned his will of his own volition, and that his declared purpose in doing so was that his children should share equally in his property, Jerusha included. This was manifestly the state of his mind when he left the home of the Crabbs. In three days thereafter, he deeded his property, not to his own sons or daughter, but to the wife and daughter of one of his sons—persons who had no direct claim on his bounty. This was absolutely contrary to all his declarations during the latter years of his life; a thing wholly unexpected, and unnatural to contemplate from his standpoint. No statement was ever made by him to anyone, unless it was to Homer, that he intended to give all his property to Marvel's wife and daughter. These things are in themselves sufficient to cast the burden upon the beneficiaries [91] under the deeds of establishing that the act of executing them was the free and voluntary act of the deceased, without instigation or direction of any other person. This the defendants have not done. But beyond this, there are suspicious circumstances that lead to the inference that both Marvel and Homer, especially the latter, participated in a plan to extort the deeds from the father. Marvel brought his father from the Crabbs' home to the home of Homer against his wish, until persuaded that it would

be better for him to make the move. Homer took his father for the ride against his positive wish and desire, and against the advice of his physician. Homer states that Marvel was present when he went for the drive, but is not sure about that. When he returned from his office, where the deeds were drawn, Homer requested his wife to take Mrs. Carden to her home on an errand. She was not only taken there, but they went for a drive afterwards, which consumed from three-quarters of an hour to an hour. In the meantime the deeds were executed, with none present except the deceased, Homer, and Jonas. The deeds were first delivered by Homer to Marvel the next day. Marvel gave them back to Homer for recording. The latter says he neglected to do it. They were then handed to the bank, with the result that they were gotten into the recorder's hands about [92] three hours after the death of the grantor. The incidents are unsatisfactorily explained. Further than this, the reason given why he wanted Homer to transact the business puts into the mouth of the father language most unlikely to have been uttered by him, considering the condition of his mind and the circumstances leading up to and attending the transaction. When Homer, according to his testimony, suggested to his father that he preferred that some one else should write the deeds, he relates that his father said, 'Now, Homer, you are the only one that is going to cause a lawsuit in this matter, and I want you to attend to it.' A little later, when asked if he had related all that his father said about the destruction of the will, Homer replied: "No; he said he made up his

mind thoroughly that he had heard so much property talk since he had been up there that he knew there was going to be trouble if he tried to divide the property as he had expected to in life, and he thoroughly made up his mind that he would deed it all away instead of deeding portions, as he had talked to me before. And another thing he said, 'Now, Homer, you are the most likely one to cause a lawsuit, and I am going to insist on you fixing the property, put you on your honor that you are not going to deal with the property or cause any lawsuits.' " And Homer says further: "I told him that I was a good loser." [93]

The attempt of the witness manifestly is to impute to his father a reason for not deeding his property as he had talked of before, which was that, if he did so, there was going to be trouble; yet he did the very thing that would not only not avoid trouble from the source Homer alludes to, but was calculated to drive Homer to a contest. Then the reasoning proceeds that, in order to prevent him from making trouble, the deceased insisted that he (Homer) draw the deeds, for thus he would be in honor bound not to attack them.

Such reasoning was entirely too complex for the old gentleman's understanding at that time; it is delusive, and is really what, in the nature of things, would not have happened.

The reference to previous trouble between the children has but a semblance of testimony in the record to support it.

After a very careful consideration of the entire controversy, I am irresistibly impelled to the conclu-

sion that, while the deceased was probably possessed of a disposing mind, yet that it was very weak, as he was physically, and that, his mind being in such weakened condition, he was imposed upon and unduly influenced to execute the deeds in question.

The decree will therefore be that the deeds in controversy be annulled and set aside, and that plaintiffs recover their costs and disbursements. [94]

As to the accounting, it appears from the answers of the defendants and the testimony that all the lands covered by the deeds were rented to Homer and Marvel on shares, the rental being one-third of the crops produced; the lessees to pay the expenses of production.

There was produced on the lands claimed to have been conveyed to Jennie Anderson Watts, in 1915, wheat amounting to 2,028 sacks, which was sold for \$3,361.06. There was produced on the lands claimed by Vernita, in the year 1914, wheat amounting to 2,865 sacks, which was sold for \$3,863.60; and in the year 1915, 1,085 sacks, sold for \$1,912.50; making a total of receipts from crops during these years of \$9,137.21. Jerusha Crabb's interest in this is \$1,015.25. To this should be added one-ninth interest in the crops for 1917, respecting which no testimony has been adduced. From the sum of these amounts should be deducted one-third of the taxes on these lands that have been paid by the defendants since the death of Thomas J. Watts. The balance would represent the amount of the rents and profits that the plaintiff Jerusha Crabb would be entitled to recover from defendants.

Let an order be entered at the foot of the decree making a reference for ascertaining the further receipts of rents and profits, and the amount of taxes paid by defendants on the lands in question.

Filed March 25, 1918. G. H. Marsh, Clerk U. S. Court for the District of Oregon. By K. F. Frazer, Deputy. [95]

And afterwards, to wit, on Monday, the 15th day of April, 1918, the same being the 37th judicial day of the regular March, 1918, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [96]

In the District Court of the United States for the District of Oregon.

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS, and VERNITA
WATTS,

Defendants.

Minutes of Court—April 15, 1918—Decree.

This cause came to be heard before this Court at Pendleton, Oregon, at the April term for the year 1917, and the testimony having been taken before the Court and the cause submitted by counsel upon writ-

ten argument and thereupon upon consideration thereof it was and is ordered, adjudged and decreed as follows, viz.:

I.

That the plaintiffs, John Crab and Jerusha Crab, are husband and wife, and that said plaintiffs were at the commencement of this suit, and now are, citizens, residents and inhabitants of the State of Washington, and that the defendants and each and all of them were at said time and still are residents and inhabitants of the State of Oregon, and that this suit is a suit and controversy of a civil nature between citizens of different states, to wit, between citizens of the State of Washington on the one side and citizens of the State of Oregon on the other, and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum and value of three thousand dollars.

II.

That the plaintiff, Jerusha Crab, and the defendants, [97] Homer I. Watts and Marvel Watts, are the sole heirs at law of Thomas Watts, deceased.

III.

That said Thomas Watts died intestate on the 20th day of April, 1914, and that at the time of his death he was the owner of the following-described property situated in Umatilla County, in the District of Oregon, to wit:

The west half (W. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$), and the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section 32, township 5 N., range 35 east, W. M., also the

south half (S.1½) of section 30, township 5 N., range 35 east, W. M.

IV.

That the estate of said Thomas Watts has been duly administered upon in the County Court for the State of Oregon for Umatilla County and said administration has been duly closed and the administrator discharged.

V.

That for a considerable time prior to the death of the said Thomas Watts he was very old and feeble in mind and body and was sick and mentally weak and easily influenced.

That shortly before the death of said Thomas Watts and while he was on his deathbed and suffering from his last sickness and so sick and mentally weak and easily influenced, the said defendants, Homer I. Watts and Marvel Watts, procured from the said Thomas Watts a deed purporting to be a deed from said Thomas Watts to the defendant, Jennie Anderson Watts for the following-described portion of said real property, to wit:

The west half of the southeast quarter (W. ½ SE. ¼), and [98] the southeast quarter of the southwest quarter (SE.¼SW.¼) of section 32, township 5 N., range 35 east, W. M., and did at the same time procure from him a deed to the said Vernita Watts for the portion of said real property owned by him described as follows, to wit:

The south half (S.1½) of section 30, township 5 north, range 35 east, W. M.
which tracts taken together covered and included all

of the land and all of the property owned by the said Thomas Watts at the time of his death except one eighty acres, which was of barely sufficient value to pay off the mortgage which existed upon said real property and to pay the necessary funeral expenses and the expense of administering his estate and that immediately after his death they caused said deeds to be recorded upon the deed records of Umatilla County, Oregon.

VI.

That said deeds and each of them were wholly without any valuable consideration and that the same were secured from the said Thomas Watts by fraud and deception and undue influence and by taking advantage of his enfeebled mental and physical condition, and the said deeds were not the voluntary and intelligent act of said Thomas Watts, and that in equity and good conscience said deeds are fraudulent, void, and of no effect.

VII.

That said plaintiff, Jerusha Crab, is owner in equity, by virtue of inheritance from her father of an undivided one-third interest in all of the real property hereinbefore described, to wit:

The west half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, and the [99] south half of section 30, all in township 5 N., range 35 east, W. M., as tenant with the said Homer I. Watts and Marvel Watts, but that the said deed as recorded makes it appear upon the records of said county that she is not the owner of any interest therein.

VIII.

That the one-third interest of this plaintiff, Jerusha Crab, in said property is of the value of more than three thousand dollars.

IX.

That the defendants, Jennie Anderson Watts and Vernita Watts, are seeking to take advantage of the wrongful and fraudulent action of the defendants, Marvel Watts and Homer Watts, as hereinbefore set forth, and are claiming the benefit of said deeds and claiming to own the said real property thereunder, and that immediately after the death of said Thomas Watts and the recording of said deeds, the defendants herein went into the sole possession of the said property and have ever since kept the sole possession of the same and continue to oust the plaintiffs and have received from the rents and profits of said property large and considerable sums of money, as hereinafter set forth.

NOW, THEREFORE, it is further ordered, adjudged and decreed that said deeds be set aside and canceled and held for naught, and that the plaintiff, Jerusha Crab, was and is decreed to be the owner of an undivided one-third interest in the said property, described as follows, to wit:

The west half of the southeast quarter, and the southeast quarter of the southwest quarter of section 32, and the south half of section 30, all in township 5 N., range 35 east, W. M., and that she recover immediate possession or her said undivided [100] one-third interest therein, and that the defendants and each of them be forever

restrained and enjoined from setting up or claiming any estate, right, title, or interest under said deeds as to the said undivided one-third interest of said Jerusha Crab, and

It is further ORDERED, CONSIDERED, ADJUDGED and DECREED that in case the said plaintiffs and defendants cannot agree among themselves as to a division of said property and a partition of the same, that the said plaintiffs have leave to apply to this Court for the appointment of a commission to partition said property and divide the same and for the setting off of the said plaintiff, Jerusha Crab's one-third interest therein and for the sale of said property if the same cannot be so partitioned and divided.

And it is further ORDERED, ADJUDGED AND CONSIDERED that since the said defendants have taken possession of said lands under said deeds they have received from said lands the sum of \$9,137.25 for the years 1914 and 1915, of which sum Jerusha Crab is entitled to one-ninth, amounting to \$1,015.25, and in addition thereto she is entitled to and should recover a one-ninth interest of the amounts received from the crops for the year 1917, but from these sums so due her should be subtracted the taxes paid by the defendants upon said property during the time the same has been in their possession, as aforesaid.

And it is further ORDERED and DECREED that (in case the parties do not agree upon said sums within thirty days from the entering of this decree) that this cause be *referred* Robert F. Maguire, Mas-

ter in Chancery of this court, to take testimony and ascertain the receipts of rents and profits for the year 1917, and the amount of taxes paid by the defendants [101] on the land in question.

And it is further ORDERED, ADJUDGED and DECREED that the plaintiffs have and recover their costs and disbursements made and expended herein taxed at \$379.85, and that execution issue therefore.

Dated this 15th day of April, 1918.

CHAS. E. WOLVERTON,
U. S. District Judge.

Filed April 15, 1918. G. H. Marsh, Clerk U. S. District Court for Oregon. [102]

And afterwards, to wit, on the 24th day of May, 1918, there was duly filed in said court a petition for appeal, with allowance of appeal thereon, in words and figures as follows, to wit: [103]

In the District Court of the United States for the District of Oregon.

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Petition for Appeal and Order Granting Same.

Filed this 24th day of May, 1918, in the District Court of the United States for the District of Oregon.

To the Honorable CHARLES E. WOLVERTON,
District Judge of the Above-entitled District:

The above-named defendants, feeling themselves aggrieved by the decree made and entered in this cause on the 15th of April, A. D. 1918, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Error which are filed herewith, and they pray that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California.

And your petitioners further pray that the proper order touching the security to be required of them to file their appeal shall be made, and further desiring to supersede the execution of the decree, the petitioners here tender bond in such amount as the Court may require for such purpose, and pray that with the allowance of the appeal a supersedeas be issued.

JAMES H. RALEY and
WILL M. PETERSON,

Attorneys for Appellants. [104]

The foregoing petition is granted and the appeal allowed upon giving a bond conditioned as required

by law, in the sum of Ten Thousand Five Hundred Dollars.

CHAS. E. WOLVERTON,

District Judge for the District of Oregon.

Filed May 24, 1918. G. H. Marsh, Clerk. [105]

And afterwards, to wit, on the 24th day of May, 1918, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit: [106]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,
Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,
Defendants.

Assignments of Error.

Now, on this 24th day of May, A. D. 1918, come the defendants, and through their counsel and attorneys, James H. Raley and William M. Peterson, and say that the decree entered in the above-entitled cause on the 15th day of April, 1918, is erroneous and unjust to the defendants; and as assignments of error insist:

First. The Court erred in refusing to grant the

motion of the defendants "For an order to dismiss the bill of *of* the plaintiffs upon the grounds that they have not offered any evidence sufficient to overcome or even to balance the answer which they have called for in this case under oath, and which have been sworn to, and are responsive in every manner to the allegations of the complaint"; which said motion was interposed by the defendants at the conclusion of the testimony introduced by the plaintiffs in chief. The record discloses that the defendants were required to answer under oath, which they did. Defendants contend that since the plaintiffs sought a discovery, requiring the defendants to answer under oath, they are bound by the old rule that the sworn statements by the defendant in direct response to an allegation in the bill is deemed to be true, unless contradicted by two witnesses, or a single witness and corroborating circumstances. Defendants insist that at the time their motion was interposed there was no evidence whatever in support of the material allegation of the bill and that regardless of the motion, plaintiff's complaint should have been dismissed for lack of proof. [107]

Second. The Court was in error in finding and decreeing in the decree that Thomas J. Watts was the owner at the time of his death of the following described lands in Umatilla County, State of Oregon:

The west half of the southeast quarter and the southeast quarter of the southwest quarter of section 32, in township five (5) north, range 35, E., W. M.

Third. The Court was in error in finding and decreeing that for a considerable time prior to his death the said Thomas J. Watts was "feeble in mind and mentally weak and easily influenced," and "that Homer I. Watts and Marvel Watts procured from said Thomas J. Watts a deed" for the said property.

Fourth. The Court was in error in finding and decreeing in the decree that the deeds were without valuable consideration and were secured by fraud and deception and undue influence and that they were not the voluntary and intelligent act of Thomas J. Watts and that they are fraudulent and void and of no effect.

Fifth. The Court was in error in finding and decreeing in said decree that Jerusha Crab is the owner in equity by virtue of inheritance of an undivided one-third interest in said real property.

Sixth. The Court was in error in finding and decreeing in said decree that Jennie Anderson Watts and Vernita Watts are seeking to take advantage of any action of Marvel Watts and Homer Watts.

Seventh. The Court was in error in the decree in decreeing that the deeds be set aside and canceled.

Eighth. And the Court was in error in finding and decreeing that Jerusha Crab is entitled to recover a one-ninth interest of the amount received from the crops of the said lands for the year 1917.

WHEREFORE the defendants pray that the Court of Appeals [108] shall reverse said decree

and render a proper decree on the record therein.

JAMES H. RALEY and

WILL M. PETERSON,

Attorneys and Solicitors for Defendants.

Filed May 24, 1918. G. H. Marsh, Clerk. [109]

And afterwards, to wit, on the 31st day of May, 1918, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit: [110]

*In the District Court of the United States for the
District of Oregon.*

Case No. 7340—IN EQUITY.

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, Homer I. Watts and Marvel Watts, as principals, and F. S. Le Grow and W. R. Taylor, as sureties, acknowledge ourselves to be jointly indebted to Jerusha Crab and John Crab, husband and wife, appellees in the above cause, in the sum of Ten Thousand Five Hundred (\$10,500.) Dollars, conditioned that

WHEREAS on the 15th day of April, A. D. 1918,

in the District Court of the United States for the District of Oregon, in the suit depending in that Court wherein Jerusha Crab and John Crab, husband and wife, were plaintiffs, and Homer I. Watts, Marvel Watts, Jennie Anderson Watts and Vernita Watts were defendants, numbered on the Equity Docket as 7340, a decree was rendered against the said Homer I. Watts, Marvel Watts, Jennie Anderson Watts and Vernita Watts, and the said defendant having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and filed a copy thereof in the office of the Clerk of the Court, to reverse the said decree, and a citation directed to the said Jerusha Crab and John Crab, husband and wife, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be [111] holden in the city of San Francisco, in the State of California, on the — day of —, A. D. 1918:

NOW, if the said Homer I. Watts, Marvel Watts, Jennie Anderson Watts and Vernita Watts shall prosecute their appeal to effect and answer all demands and costs if they fail to make their plea good, then the above obligations to be void; else to remain in full force and virtue.

HOMER I. WATTS,
Principal.

MARVEL WATTS,
Principal.

F. S. LE GROW,
Surety.

W. R. TAYLOR,
Surety.

Approved this 31st day of May, 1918.

CHAS. E. WOLVERTON,
Judge of the United States District Court of Ore-
gon. [112]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRAB and JOHN CRAB, Husband and
Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Verification of Sureties on Bond on Appeal.

State of Oregon,
County of Umatilla,—ss.

I, F. S. Le Grow and I, W. R. Taylor, after being first duly sworn, each for himself and not for the other say that I am a resident and inhabitant of Umatilla County, State of Oregon, a freeholder therein; that I am worth the sum of Ten Thousand Five Hundred (\$10,500) Dollars over and above all my debts, liabilities and property exempt from execution, and I hereby acknowledge myself as surety upon the bond on appeal in the case of Jerusha Crab and John Crab, Husband and Wife, Plaintiffs, vs. Homer I. Watts, Marvel Watts, Jennie Anderson Watts, and Vernita Watts, Defendants, in the Dis-

trict Court of the United States for the District of Oregon, for all uses and purposes regarding the said Bond on Appeal.

F. S. LE GROW.

W. R. TAYLOR.

Subscribed and sworn to before me on this 28th day of May, A. D. 1918.

[Seal]

JENNIE G. WATTS,

Notary Public for Oregon.

My commission expires October 4, 1920.

Filed May 31, 1918. G. H. Marsh, Clerk. [113]

And afterwards, to wit, on the 20th day of July, 1918, there was duly filed in said court a statement of the evidence, in words and figures as follows, to wit: [114]

*In the District Court of the United States for the
District of Oregon.*

JERUSHA CRABB and JOHN CRABB,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JENNIE
ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Statement of Evidence.

The defendants and appellants, in compliance with Rule 75, prepared and submitted a statement of the evidence in this cause, in simple, condensed and nar-

rative form; but, thereafter the plaintiffs filed objections thereto and offered amendments. Whereupon the defendants and appellants, having no objections to the amendments offered, have prepared another statement of the evidence in which they have included all of the amendments offered by the plaintiffs, and now therefore submit narrative statement as follows:

Testimony of William David Parker, for Plaintiffs.

WILLIAM DAVID PARKER, first witness called by plaintiffs and appellee, testified that he resides close to St. John, Whitman County, Washington; owns a farm there and is acquainted with the plaintiffs and lives about a half mile from them; that he "knew Thomas J. Watts"; thinks he became acquainted with him in 1878; "before I went up to St. John I had lived" near Athena, Umatilla County, Oregon; Athena, at that time, being called Centerville; that he was "pretty well acquainted with Watts—lived neighbor to him part of the time and later boarded with him" two different times and that they used to assist each other in the farming business and were friends; that he saw Watts at the home of the plaintiffs near St. John, Washington, about the 24th day of March, 1914, "he was there when I moved back from Spokane," and saw him most every day while Watts was there; that Watts appeared to be feeble; [115] was worse at times "afterwards" and then at other times about like he was when he first saw him "there"; that he knows Watts, talked to him a couple of times about his property affairs;

(Testimony of William David Parker.)

“the way he came to be talking was he” asked him to write to Fay Le Grow of Athena, Oregon, for a will Watts had there, stating that his hands were in such a shape that he couldn’t write and wanted witness to get the will; “that was the first time”; witness wrote the next morning. Watts told him afterwards he got the will and said to him regarding it, “I put it in there, and that is done,” pointing at the stove when he said it. That when Watts first talked to him about the will he said: “I have made a will, and I am not satisfied,” and further stated that he wanted his daughter Jerusha Crabb to have her share of the property, as she was his child the same as the boys were. That at the time Watts went away from the home of Crabbs, witness, Mr. and Mrs. Crabb, and the daughter, Viola, Marvel Watts and Dr. McIntyre were there, and that Watts didn’t talk as though he wanted to go away from the home of Crabbs, and said, “Marvel has come after me and I guess I will have to go.” Watts was in bed at the home of John Crabb, but was taken away in an automobile. That they did not want him to take him away. Marvel Watts said, “I have come after him, and I am going to take him.” That they got him out of bed and carried him to the automobile. That Mrs. Crabb, Dr. McIntyre and Marvel Watts went with Watts from the home of the Crabbs to the train. That Watts and Jerusha Crabb appeared to be friendly in every way; that Watts came to the home of the witness about seven years ago, stayed with witness and witness took him over to the home of

(Testimony of William David Parker.)

Crabbs and he and they appeared to be very friendly in every way. Witness never heard Watts say a word against Jerusha Crabb in any way, but witness never heard Watts say he was "attached to her."
[116]

Upon cross-examination, this witness stated that he saw Watts two or three different times after 1903, up about St. John when Watts would be there on a visit; saw him the last of March and fore part of April, 1914.

Witness moved to Spokane in the fall of the year 1912, and came back to St. John about the 24th day of March, 1914, and saw Watts at the home of the Crabbs the next morning, the 25th of March, talked about affairs generally with him, went to see him nearly every day except two. Witness had a cold and didn't feel right while Watts was at Crabbs and cannot remember whether it was a week or not after he saw Watts on the 25th of March until Watts asked him to write for the will. That Mr. Crabb told witness the day before he wrote for the will that Watts wanted to see witness and that witness, next morning, while he was on his way to the depot to bring back some "stuff" stopped at the home of Crabbs and wrote the letter for the will; that Watts told him he had a will at Fay Le Grow's—the bank at Athena—was not satisfied with it, wanted witness to write to Fay, as his (Watts) hands were in shape he couldn't write; that Watts talked to him in an intelligent manner, remembered where his will was, the place he had left it, the name of Le Grow, said he was not

(Testimony of William David Parker.)

satisfied with it, but did not say anything about the contents of it at all; and witness wrote the letter for the will the next morning. Watts said to witness, "Fay knows you and he will send it to you." Witness further said, "And I just wrote to Fay and told him Mr. Watts said he had a will there, and that his hands were in such condition he couldn't write; and I asked him—he asked me to write—and I wanted him to send it to St. John in care of John Crabb." Witness identified the letter marked Defendants' Exhibit "A" for identification. Witness [117] does not remember how long it was after he wrote the letter until he saw Watts again, but when he saw Watts, Watts told him he had got the will, pointed to the stove, and said he put it in the stove and that was done. Witness never saw the will, never tried to find out anything about it in any way, and Watts did not tell him what was in the will. He understood Watts to say that he wanted Mrs. Crabb to burn the will, and that she wouldn't do it, and that he (Watts) put it in the stove. Watts told him, at the time he asked him to write for the will, that he was not satisfied with it; that she (Jerusha) was his child the same as the boys and he wanted her to have part of his property. "His conversation would lead a person to believe that was the reason he was not satisfied with the will." That on the day when Watts was taken away from the home of Crabbs, Marvel Watts told witness he had come to get him (Watts) and appeared to be dissatisfied with the way he was being taken care of; that witness helped to dress Watts

(Testimony of William David Parker.)
and take him out of bed that morning.

“What was his condition when you took him out of bed?”

A. Well, he was in a feeble condition.

Q. What was the condition of his clothing and the bed—was it clean?

A. Well, now, I don't know that I could say just exactly what it was.

Q. Was it clean—was he in a clean bed and was the clothing he had on clean?

A. Well, his clothing—we changed the clothing he had on.

Q. Wasn't the bed and the clothing he had on in a foul condition—and wasn't he lying there in a foul condition at the time Marvel took him away? [118]

A. Well, now, I didn't notice that it was particularly foul—anything of the kind, sir.

Q. Do you remember making some remark about it and stepping to the door to get a breath of fresh air? A. No, sir.

Q. You don't remember that? A. No, sir.”

That Watts knew him when he was there that morning, but he never saw Watts alive any more.

On redirect examination that witness said that the Crabb house was a fair house but that he did not notice anything unusual about the bed Watts was in—didn't notice the bedclothes being dirty or anything of that kind or being particularly clean. And witness further said: “I was not in very good shape at the time. I was suffering with a cold, like I am now. I might have not been able, if they had not smelled

(Testimony of William David Parker.)

just right or anything, to detect it"; that he had a very severe cold, did not notice anything wrong about the bed; that Marvel Watts claimed at the time to notice something was wrong and said, "He stinks," but witness wasn't there to look for anything of the kind and did not notice anything of the kind; that witness is in his 74th year and knows that Watts was past eighty; that when the defendants, Homer Watts and Marvel Watts, were boys, witness was a neighbor to them, but at that time he did not know Mr. and Mrs. Crabb at all; that "These boys were raised up with me; they was raised right up there by me, you might say. I had more acquaintance with them than I did with Mr. and Mrs. Crabb."

[119]

On recross-examination he stated that he moved up to the Athena country in the fall of the year 1878, and stayed there until 1889 or 1890, when he moved into Athena, but while living out on the farm he lived near Mr. Watts, but never saw Jerusha about his home there near Athena at any time, but heard the boy's mother say she was there.

Testimony of Dr. Douglas McIntyre, for Plaintiffs.

Dr. DOUGLAS McINTYRE, a graduate of Georgetown Medical School, Washington, D. C., who had been practicing medicine at St. John, Washington, about twelve years, acquainted with Mr. and Mrs. Crabb, stated that he knew Watts just "for a very short interval"; was first called to treat Watts the 3d day of April, 1914, and continued to wait upon

(Testimony of Dr. Douglas McIntyre.)

him until the 11th day of April, 1914, at which time Watts was at the home of John Crabb about eight miles east of St. John; that Watts was getting about the usual care there that a man gets at a ranch house; that the Crabbs have a good, comfortable new house and Watts had a good, comfortable room, was on a lounge the first day he saw him but after that he was in bed; that the bed "was fairly clean; that an old man with prostate gland nearly always has a little residual urine—strong smelling urine"; that Watts had "retention of urine" and enlarged prostate gland and it was rather hard to get an instrument into his bladder and to some extent, a slight lack of control of urine after the instrument was put into his bladder; that Watts was a very old man, a very feeble man, "feeble for his age," and was in intense pain when he first saw him on the lounge, was restless; that he never saw him up or down except he was helped; that he was there the day Watts was loaded into an automobile [120] and taken to the train.

"Q. What did you think at that time as to his being in a condition to be removed?

A. Well, he was not in a very good condition to move.

Q. Did you approve in any way of his removal?

A. Well, I approved of it to this extent, if I remember correctly, that Mr. Watts said—Marvel Watts explained to me that he could get a great deal better care, better nursing and better surroundings, perhaps, in every way than he had there; and that

(Testimony of Dr. Douglas McIntyre.)

was about the extent, I guess, of my approval of his being moved." That he figured Watts was about on his last legs anyway and had not talked with him about being moved and does not recall knowing how Watts felt about being moved. "I was leaving that up to Marvel Watts," but didn't think he was in "especially good physical condition to be moved," doesn't recall telling Marvel Watts that he approved of the removal; that he did not think Watts would live long and told Marvel Watts and the Crabbs so; that Watts was carried out to the automobile. "I don't think he walked at all." "I am quite positive he did not walk into the train." That Watts was on a cot in the baggage car or express car, and that witness, Marvel Watts and Watts were together in the car from St. John to Athena; that he could not see much difference in the condition of Watts at the time of leaving St. John and the time of getting into Athena; "I didn't think he talked quite as much as he did before"; didn't make much noise; that day was the 11th day of April Watts was brought to Athena from St. John; witness saw him the next morning, 12th of April, but did not talk to him as he didn't ascertain [121] whether he was asleep or awake. "When I first saw him (at the home of Crabbs) I took it to be a case of sciatica, that he had trouble with the sciatic nerve, and complained of pain down the back of his leg—I believe it was the right leg, and I presume that that had a good deal to do with this retention of urine that followed; and he was about like an extremely old man after suffer-

(Testimony of Dr. Douglas McIntyre.)

ing intense pain and loss of rest." "His mental faculties, of course, were not—I did not figure they were clear, except one time. I was out there one day—just what day I forgot, but it was after we had to draw that urine, I guess—that he talked I thought rather pleasantly about things that were past." "He didn't talk much about the present."

"Q. Now, what do you say, Doctor, as to whether or not during any of that time that you treated him, whether in your judgment he was in such condition as to be able to intelligently manage his affairs or make an intelligent distribution of his property"?" (Page 30.)

Q. I don't believe, if he had been left to his own initiative, that he could have very well planned out anything that was at all complicated at any rate; that he didn't see a great deal of promise for Watts either physically or mentally; that, as he recalls it, he gave him something to increase the flow of urine and believes he gave him a little tonic doses of strychnine; that strychnine is a heart stimulant; that on the train Watts did very little talking; that, as he recalls it, Mrs. Crabb didn't want Watts taken away; that he thinks Homer Watts met them. [122]

On cross-examination he stated that he doesn't recall Marvel Watts being at the Crabb home when he first saw Watts, but saw Marvel there afterwards; that he saw Watts five or six times at Crabbs, stayed with him about two hours the first day and perhaps an hour at each of the other times; that he

(Testimony of Dr. Douglas McIntyre.)

called Dr. Mitchell to assist him in treating Watts sometime between the 3d and the 8th and they had considerable difficulty in getting the instrument into the bladder; that he doesn't recall passing the catheter but once; that it must have been about the 5th or 6th that Watts talked to him something about living around Athena. "I believe I asked him questions. I did test his memory a little, I think, at that time. I found he had a much better memory for things past some time than he did for the present. I think perhaps I asked him how he enjoyed his trip to California and I thought he answered intelligently." That he asked Watts about things which happened after he was sick and he could not recall definitely; that he never talked to him about business and doesn't remember hearing him say anything about his property; that he carried on a conversation with him probably twenty minutes one day; that he remembers asking him about his condition, and, as he remembers it, Watts answered him a time or two that he thought he was better; that perhaps Watts was asleep when he saw him the next morning after bringing him to Athena but he does not think he spoke to him, does not know whether he was asleep or not. He had acted that way before. He acted a good deal the same on the train coming down. You might go around him and you wouldn't know whether he was asleep or not. "My presumption was that he was asleep." That after bringing [123] him to Athena he presumed another physician would take charge of him; that

(Testimony of Clarence E. Skelton.)

there was no nurse with him except Mr. and Mrs. Crabb while he was at the Crabb home.

Testimony of Clarence E. Skelton, for Plaintiffs.

CLARENCE E. SKELTON, of Spokane, Washington, stated that he resided, 1912 and 1913, near Kennewick, Washington, and that Watts lived with him in his family at that time—from a month to six weeks or two months or longer in 1912, and was there again in 1913, a month or more in the fall; got sick and went to California, got letters from him from California.

“Q. Now, during the time he was there during those years did you ever hear him talk about his property or what he was going to do with it?

A. Well, I heard him speak about his property quite often. He was a man that repeated things a good deal, and I heard him speak of it quite often.

Q. Now, just state to the Court, what, if anything, he said in relation to what he was going to do with his property.

A. Well, he frequently mentioned that he wanted his children to share alike in his property, from the way I understood him all the time.

Q. What children would he mention at this time?

A. He would mention Homer, Marvel and Jerusha. He spoke a good deal of Jerusha, his daughter, the only daughter he had, as I understood it.

Q. Do you know what his feelings toward Jerusha was?

A. It always seemed to be the very best from the way he spoke of her.

(Testimony of Clarence E. Skelton.)

Q. Can you tell the Court what he said about her?

A. Well, he used to talk about her quite often, about making [124] his home there a good deal, and he would correspond with her, and he used to look for letters from her quite often when he was with me, and he used to tell me when he was talking about his property that he expected them to share alike in it." That Watts told him a good deal of his family affairs and spoke very highly of his first wife, but that he didn't speak kindly of his second wife—called her a she-devil.

On cross-examination he stated that he was not acquainted with Mr. and Mrs. Crabb at the time he first became acquainted with Watts and was not acquainted with them until he met them at the trial and that he lives about two hundred miles from them; that he first got acquainted with Mr. Watts in Spokane in 1903 or 1904; that Watts came to his home at Kennewick about 1912 to take electric treatments; that he has an electric robe and used to give Watts treatments with it; that he is not a physician but gave Watts treatments and that Watts boarded with him; when he left in 1912 he said he was going to California; that he got letters from him pretty often from California, but does not remember of getting any in 1912 but remembers getting one in 1913 and thinks he got one in January, 1914; that he thinks in August, 1913, Watts was ill at his house and a doctor from Kennewick was called to see him; that Watts told him he had a ranch at Athena and that the boys had it rented and were pay-

(Testimony of Clarence E. Skelton.)

ing him one-third rental; that Watts talked to him about his second wife, and used to sit and cry about her and tell him he had given his second wife some land, and a house and lot in Athena, and further told him he wanted the balance of his property to go to his three children. [125]

“And in all these conversations he would say he wanted them to share alike?”

A. Well, sometimes he might not and other times he would. He spoke of his daughter Jerusha a great many times, how she cared for him, and he seemed to think an awful lot of her.

Q. What did he say that caused you to think he thought an awful lot of her?

A. Well, he used to say he would go there when it was disagreeable for him other places, and she always treated him well, and he would always write—I know he used to write when he was at my place, and he received letters from her quite often.”
(Page 54.)

That to the best of his recollection he never saw Watts after September or October, 1913; that Watts, as he remembered it, never spoke of his will but did tell him he wanted his children to share alike in his property; that while Watts was at his place he received letters from Jerusha and wrote letters to her; that Watts took several treatments for rheumatism with witness in his private home at Spokane about eighteen months after he had taken the first treatments, and after took treatments with him after he took a hotel in Spokane; that the rela-

(Testimony of Clarence E. Skelton.)

tions between him and Watts were very friendly and Watts confided in him a great deal and told him he felt more at home at his place than any place away from home; that there was trouble between them one time and that Watts "came to me and begged me to forget the past and take him in and treat him—cried like a baby—and I told him I would, and I did so, and we buried the past," and that after that for six or eight years they were very [126] friendly, and that he used to come to his place every year and stay from one and two months at a time.

On recross-examination he testified that Watts took the first treatment with him, as he remembers it, in 1903 or 1904, and that Watts and the trouble over his (witness') wife was about that time and he settled with Watts for \$250.00 which was given to the wife of witness who went east on it and was gone eighteen months and wrote witness a number of letters asking him to take her back, but it was eighteen months before they lived together again.

Testimony of Viola Etta Wheeler, for Plaintiffs.

VIOLA ETTA WHEELER, daughter of plaintiffs, twenty-two years old, married, testified that Watts, her grand-father, came to the home of her parents, plaintiffs, about the middle of March, 1914, and remained about twenty-five days, was not able to walk without help when he came and got worse in about two weeks so that he was not able to walk even with help; was put to bed; that the home of her

(Testimony of Viola Etta Wheeler.)

parents is a good comfortable home of seven rooms; that he had the bedroom downstairs, where her father and mother used to sleep, and her father slept in the same room to take care of him; that her father and mother waited on him and gave him as good care as he could have had without a trained nurse; that the blankets on the bed where Watts slept were changed every day and washed and the bed was comfortable; that shortly after he came there he asked her mama to write for the will but she refused to do so and he then asked Mr. Parker to write for it, as Parker and he were old acquaintances and good friends; the will came in a large envelope addressed to Watts, and when it came Watts signed a receipt for it which was returned and the will was put away by Watts, who [127] afterward burned it. After it was put away, he asked for it, her mother gave it to him, he opened it and read it and asked her mother to burn it but she would not do so and Watts said he would have Mr. Parker to burn it, and "I told him if he wanted to burn it to burn it himself and I opened the stove and helped him up and he burned it," and said, "Now, it is done and they will all share equal." That two or three days thereafter Marvel Watts, his wife and daughter and mother came to the home of her father at which time Watts "Was not exactly in his right mind and was not able to set up"; that Marvel Watts came on Friday evening and stayed until Monday, went away, came back in about a week to take grandpa home; that her parents did not want him taken away, but

(Testimony of Viola Etta Wheeler.)

Marvel said he had come after him and was going to take him, and that her grandpa did not want to go at first and said if Marvel had come to take him home to sign papers he would not go; but Marvel said he didn't intend to take him home to sign papers at all; and grandpa said he had burned the will and wanted them all to share equal; that on the morning Watts left he called her folks into the room and said, "Now, on my word and honor there will be no papers made and the property will be divided equal"—he said this to my father and to my mother; that Dr. McIntyre, her mother and Marvel Watts took Watts from the home of her parents to the train; that they carried him out to the car, that he had not been able to get up by himself since the first time Marvel was there, and had only been up once at all, and then for only twenty minutes. (Page 69.) [128]

On cross-examination she testified that she was in an adjoining room and heard Watts say to her papa and mama, "On my word and honor the property will be divided equal"; that she heard him tell Marvel he would not sign any papers, and if Marvel was taking him away to sign papers he would not go as he wanted the property to be divided "equal," and Marvel said to him, "It will be as you want it." This was the second time Marvel was there, and the next morning after he came. He came in the evening about five o'clock, and they left between eight and ten next morning; that she never heard her father or mother say anything to Watts about how the prop-

(Testimony of Viola Etta Wheeler.)

erty should be divided; that Watts talked about his property every day and always said he wanted it divided equal. She heard him tell Parker he had a will in the bank in Athena and wanted it, was not able to write himself and wanted Parker to write for it, and the will came two or three days or a week after Parker wrote the letter, and she got it from the mail-carrier and took it in the dining-room to her grandfather, who was sitting up at the time. He opened the envelope, took out the will, which was in another envelope, and asked her mother to put it away. Several days thereafter he asked for the will and her mama gave it to him and he opened it, read it, but she (witness) did not read it and does not know what it contained. He asked her mama to put it in the fire and she said she would not do it. When her mother refused to burn the will he said he would have Mr. Parker to burn it. "I told him if he wanted it burned to burn it himself; I opened the stove and helped him up and he put it in," and he said, "Now, it is done and the [129] property will be divided equal." She did not hear him mention property or wills or deeds at any time after that until Marvel came there when she overheard some conversation regarding property; that she never has talked this matter over since its occurrence with her father and mother and never told them what she was going to testify to about overhearing those conversations—never told anybody but Judge Bennett.

(Testimony of Viola Etta Wheeler.)

On redirect examination she said that Watts was at the home of her parents two or three times a year during the last six years before he died and would stay there a week to a month and that he always treated her mama as though he thought a good deal of her; that his mind always seems to dwell more or less on his property and he talked about the way he thought it ought to go and acted as though he thought her mama ought to share equal with the boys; that he always spoke in a very loud tone but that he was deaf.

On recross-examination she said that she had never heard him mention a will until he asked her mother to write for it; that her mother did not read the will and as far as she knows neither she nor herself knew what was in the will and that if her mother ever read it she never knew it.

Testimony of Jerusha Crabb, in Her Own Behalf.

JERUSHA CRABB, one of the plaintiffs, testified that she would be 54 years old the 25th day of May; was born in Linn County, Oregon; that the defendants, Homer I. Watts and Marvel Watts, are her half-brothers; that her mother died when she was about two years old and that she was raised by her uncle, Marvel Watts, with the exception of about the first two years of her life and another period of about [130] three years; that when she was two she went to her uncle's and stayed about a year, and then was with her father for three years until she was six years old; that her sister died at about

(Testimony of Jerusha Crabb.)

the age of fifteen years; that her father went back to Missouri and married his second wife and lived in Umatilla County while she herself lived with her said uncle, Marvel Watts, in Washington County, Oregon; that when she married Mr. Crabb she went to Dayton in Eastern Washington, lived there about a year and a half, then moved to near Heppner, Oregon, for two and one-half years, and then moved to Whitman County, Washington, where they now live; that while she lived with her uncle, Marvel Watts, she visited with her father one time only, and that was when she was nine or ten years old, and for a period of about six weeks; that right after she was married she visited with her father about a week and about a year and a half after that visited him again about one day and thereafter the next summer her father visited her for a day or two; that about twenty-three years ago she visited with him about a week, and again in June, and again later when the second boy died; that after her father and his second wife were separated about nine years ago he visited her a great deal more but she didn't go down to his place to see him, and the last three years before he died he visited with her a great deal, and wrote letters to her regularly, writing to her every week the last two years, had a very hard sick spell at her home about six years ago, stayed at her house three or four weeks, and then went up to Skelton's and stayed a month and came back the fore part of December; that she nursed him through [131] the sick spell. "Then I disremember exactly how many

(Testimony of Jerusha Crabb.)

times. Every time he went to Spokane or came back, he come by and stopped, and stayed from a week to three weeks, and I disremember just how much he came until the spring of 1912 he came there and he stayed quite a while. I won't say how long. Then we went up to Mr. Skelton's and stayed and doctored a while, then he came back and stayed with me until about the first of October. Then he went down home and went to California—I think he spent the winter of 1911 in California, and he spent the winter of 1912 there," and wrote her that he was coming back to spend the summer that he went to Kennewick in the summer of 1913 at Skelton's place and wrote to her in August that he was sick and was going back to Athena and then going to stay with her through the winter or go to California that the next letter she got from him he had only stayed at Athena a short time and went to California where he spent the winter, was taken sick, and that she got a letter from him every week while he was in California and that in every letter he told her he was getting feebler, went there for his health but it was doing him no good and that he wrote to her he was getting worse and told her in the latter part of February, "I want to stay here till the 15th of March if I can, but I am sick"; that there were just a few words in each letter; that he wrote to her that if he did not get able to come by the 15th of March some of them would have to come after him and that a few days later she got a letter from Thomas Page stating her father was very much worse and that

(Testimony of Jerusha Crabb.)

“We would have to come and get him.” That after he was divorced he didn’t live continuously in any one place, he spent two [132] winters in California and one in Willamette Valley, but the first year after he was divorced he stayed with Homer Watts most of the year and after that when he was at Athena he made his home with Marvel Watts, and when at Spokane and Kennewick he made his home with Mr. Skelton, but she does not remember how much of the time he visited with her; that her father was not at her home at all during the year 1913, the year before he died; that he left in the fall of the year 1912, went to California, came back to Athena in the spring of 1913, wrote her several letters from Kennewick, went back to California again in the fall. When she got the letter from him from California saying that some of them would have to come to get him, she wrote a letter to her brother, Marvel Watts, and told him their father was very poorly and some of them would have to go after him, and Marvel told her he would go. This was the last of February or the first of March, and her father was brought to her home by Marvel the 17th of March, having been at Athena a few days before that. His health was very feeble then; he was not able to walk without support, and gradually grew weaker all the time he was there and she used hot water bottles, liniment and bathed his limbs with alcohol when he had bad spells and pains; that Marvel, his wife, little girl and her stepmother came about four o’clock the 3d of April at which time her

(Testimony of Jerusha Crabb.)

father was "entirely unconscious," partly, she supposes, from the effect of medicine and partly from disease; that Marvel hadn't been there after he brought father until the third of April (page 93); that Marvel remained until the next Monday morning but her stepmother left on Sunday morning; that she does not think her father [133] recognized any of them while Marvel was there, but on Wednesday he got so he could recognize people and talked to her and asked her about them being there, thought Homer had been there but he had not; that he was not able to get out of bed without help from the 3d of April until he was taken away on the 11th of April, but on Wednesday afternoon appeared brighter and asked her to help him up and she sat him out on a chair for fifteen or twenty minutes, and he said to her, "Isn't this the longest afternoon you ever saw?" and he said he was "awfully tired," and she put him back to bed. In answer to the question, "Now, knowing your father as you did, having been around with him as you have, and being there with him, what do you say, in your judgment, as to whether or not between the 3d day of April when he took this bad spell and the time he went away from your place, he was ever in condition so that he could do intelligent business?" she said, "Oh, no, no." That she did not know, prior to March, 1914, that her father had made a will. He told her the next day after he came about his will, talked about his property a great deal almost every day; told her he had made a will and wanted her to send and get

(Testimony of Jerusha Crabb.)

it as it didn't suit him, wasn't what he wanted, had Mr. Parker, a near neighbor and old friend of his write for the will. The will came, was brought into the house by her daughter Viola, the outside envelope torn open by him, signed and dated a slip of paper in his own handwriting for the will, could sign his name easily, used his right hand, used a pen, handed the will to her to put away which she did, asked her one morning thereafter to get the will, saying that it worried him. "I cannot say just exactly how [134] many days after he got it. He woke up one morning and called me to him and asked me if I would not get the will. 'He said it worried him that night.' I says, 'Oh, well, wait till after breakfast, Pap,' and I took him up and dressed him and brought him to the fire, and he asked me then, he says, 'Where is that will?' and I says, 'I will go and get it.' " She got it; he tore it open and read it and she stood behind his chair saw every word that was in it but her daughter did not know that she did so, as she stood a few steps away from him and the will was in "very large print handwrite and I could read it all." It gave Homer and Marvel equal shares and made them both administrators and gave her \$200. He asked her to burn it; she refused, and he said he would have Bill Parker to burn it. Viola was standing at the table and said, "Well, Grandpa, burn it yourself. I will open the stove"; Viola took the stove lid off and lifted him up and he burned it and said, "Now, it is done," with a laugh saying, "You shall have your share equal"; that the

(Testimony of Jerusha Crabb.)

property seemed to be on his mind continually and that if he ever mentioned the will he cried until she had to pacify him to keep him from crying so hard and that he told her he did not want to make the will in the first place but that "they made him do it or rather forced him to do it." That when Marvel came there to take him away she did not want him to go as he was too feeble, but Marvel said he had come after him and was going to take him, saying the doctor thought it would be best, but that her father said, "Marvel, if you have come after me to take me down to make any papers, or sign any papers, I won't go any step," and that Marvel said [135] "Father, we have no such intention as that; it shall be divided equal; I won't influence you to sign anything," or words to that effect; that thereafter he asked Marvel if he would see that the property was divided equal between the three children—Marvel, Homer and herself—and that Marvel said, "Father, what makes you worry about it"? "I will do the thing just right"; that then her father called for her and told her that he wanted her, Homer and Marvel to have the property equal and that she said, "All right, Pap"; that then he called for her husband, took him by the hand and said, "John, you and Jerusha has been so kind to me, on my word and honor, I want Jerusha to have her one-third of the property and I want it divided equal"; that after her father was taken from her home to the train she had a talk with Marvel about the property in which he said, "Now, Jerusha, don't worry anything about

(Testimony of Jerusha Crabb.)

the property; there has been family trouble enough and we will divide it equal and have peace now"; that while her father was at her home she and her husband gave him the best care they possibly could, kept him in the best bed they had, with new quilts, a new blanket and put clean blankets on the bed every day and kept the bed clean, but that her father could not help but soil the bed from the time he took sick, as he was in so much misery that he could not help himself, but that she kept him clean, changing his bed every day, giving him the best care that she could give him without a trained nurse and that Marvel objected to her getting a trained nurse, telling her he had a nurse already employed and that it would be better to take him home, but she objected to his being taken away as she thought he was not able to go. That she was never on the witness-stand [136] before in her life.

On cross-examination she testified that her father came to her home in the spring of 1912, went to Spokane, returned to her home and was there altogether in the year 1912, two and one-half months, left for Althena about the first of October and then went to California; but that she does not think she saw him or that he was at her home at all in the year 1913, nor in the year 1914 until about the 17th day of March when he came to her home with Marvel, and that she did not know he was coming then until Marvel sent her word that they were coming; that Marvel came with him to her home on the 17th and left on the 18th of March. That the same day Mar-

(Testimony of Jerusha Crabb.)

vel left her father talked to her about his property, but she did not know he had a will until he told her, saying, "Jerusha, I have got a will and I want you to send and get it—write and get it for me," telling her that it was at Althena and that he didn't like the way it was made and when she told him she would not write for it he told her he would get Bill Parker to write for it. That her father was so very deaf she could not talk to him with any satisfaction and didn't try to talk to him very often; that after the 18th when Parker came, she heard him ask Parker to write for the will and that Parker says it was the 24th when he asked him to write for it; that she don't remember the exact date; that her father told Parker at the time his hand was crippled so he couldn't write a letter to do much good and wanted him to write and get the will; that she didn't pay very much attention to what he did say about his property—just "paid attention enough to show [137] respect and listen to him"; that she could hear him all over the house; that he would get dissatisfied and cry and say the will didn't suit him and would cry every day and that she would pacify him and tell him it would be all right and for him not to worry; that after the will came she put it away and it was not opened for several days, was burned a few days after he had the bad spell—might have been two or three days; that she read the will over his shoulder, could read it plainly, never told him she read it; never told anybody that she read it; that the will provided that the property be divided between the two boys and that she

(Testimony of Jerusha Crabb.)

was to have \$200; that the will was dated the 25th day of October, 1910, and she thinks Homer Watts was one of the witnesses; he told her once before that he had made a will before he and his wife were divorced. That she got \$10,000 out of her uncle's estate but that her father never knew how much she got out of it. That she believes it was on Sunday morning, the 5th of April, when two doctors were there and her father was operated on, and that Marvel got back there, the second time, the 10th or 11th of April, at which time her father was in bed and that she heard a conversation between her father and Marvel in the evening after he came, in which Marvel told him he had come to take him home, and that her father said to him, "Marvel, if you have come to take me to sign my property away I won't go any step," and Marvel said he didn't have such intentions; and, the next morning her father called Marvel and told him he wanted the property divided equally, at which time her daughter was near by, and that he did [138] not want to go away if they wanted him to make any papers; that while her father and Marvel were talking she was in the kitchen preparing breakfast and her daughter motioned for her to keep still as the daughter was hearing the conversation; that thereafter her husband came, went into the room and she heard her father say to him, "On my word and honor, John, I want Jerusha to have one-third of this property. I never was treated any place better in my life than I have been here," to which her husband said, "Thank you," or something of the kind; that

(Testimony of Jerusha Crabb.)

she supposes her father was conscious at the time as they had been giving him so much stimulant so he would be able to travel, as he was taken away about an hour after the conversation; that when he was given a stimulant his mind would be better and that "he was stimulated up so I think he understood what he was doing. The more stimulant you gave him, the stronger his body was and the stronger his mind"; that when they would stimulate him he would brighten up all the time, and when that wore off, he went into a stupor."

Q. How often did you bathe him during the last days that he was there?

A. Why, after he had those pains, about a week before he took bad, I bathed his limbs sometimes two or three times a day and rubbed them with alcohol.

Q. But I mean give him a bath over his body and take care of him; what care did you give him in that respect?

A. Well, I gave him a sponge bath every day." That she went to the depot with her father when he was taken away, and that Marvel talked with her in a low voice [139] at the depot and said to her, "Jerusha, don't worry anything about the property. There has been family trouble enough, and I will see that it is divided equal and we will have peace." That was the first time she ever heard of her father having a will was when Marvel told her about it, the time he came there with her father; that Marvel said to her, "Jerusha, Father's got a will and I want you to get it and destroy it and get him to make another

(Testimony of Jerusha Crabb.)

one"; that she said to him, "Marvel, this is the first I ever heard of it; never heard of that before"; that she told him she would not get the will, and she thinks Marvel told her the property was mostly willed to the boys and that he wanted her to get it and destroy it and another one made; that on the 3d day of April, Marvel, his wife and daughter and his mother (stepmother of witness) came to her home to see her father—came on Friday and all of them left on Sunday except Marvel and his wife who went away Monday, and that all of the time they were there her father was unconscious and never knew his divorced wife was there. That her husband never read the will, never had any opportunity to read it.

On redirect examination she stated that her father always seemed to think a great deal of her; that she thought lots of him, and as he grew older he seemed to think more of her every time he came; that he talked about his property and worried and said the boys would get away with it, get the property away from her and he wanted her to have her third; that she told him the boys seemed to think lots of him, especially Homer—an awfully good boy—who thought lots of him and that when she told him that he [140] would be quiet for a while, smile and be happy again. Then he could commence again; that she always tried to make him think an awful lot of the boys; that she does not know in whose writing the will was but was under the impression that it ended up by saying it was drawn by "I, Homer Watts." "It is drawn by I, Homer Watts," she thinks but is

(Testimony of Jerusha Crabb.)

not sure; that she got \$10,000 altogether out of her uncle's estate but was out quite a bit of expense getting it. That the first time she ever heard of the will was when Marvel came up to her house with her father and told her about it, wanted her to send for it and said to her, "Father wanted me to get it but I was in a hurry. He wanted me to get it the day we left, but I was in a hurry and didn't have time to get it"; and that Marvel further said, "Well, Homer has never treated father right, and I don't want him to have any of the property. You should have your share. I feel that you should have your share, and I would like you to get it and have him make another will"; but she told him she would not do it and said to him, "It is not right. Homer is our brother and father's boy, and I believe Homer is a good boy, and I want to see him have just as much as I have or as you have. He is as much entitled to it as you or I." That her father told her his second wife had never treated him right and he did not seem to like her—seemed to be very bitter against her.

On recross-examination she said that when Marvel brought her father up to her home, she and Marvel walked out on the porch, and that Marvel told her about her father having a will and asked her to send and get it and [141] that she told him she would not do so, and told her that Homer had never treated their father right but that she told him Homer was a good boy and was as much entitled to the property as he or she and that she always thought lots of Homer, and that Marvel also told her that Homer

(Testimony of Jerusha Crabb.)

had his share and he didn't want him to have any more but wanted her to have her share of it. That she cannot remember whether Homer's name was on the will or not but she did know how it started and could repeat the first two or three lines of it a while but she thought the will was finished up with the words, "made by I, Homer Watts"; that most of the will was in "handwrite" and was dated the 25th of October, 1910; that it was the next morning after Marvel told her about the will that her father told her the boys had made him make the will. That her father told her when he left her house in 1912 he had no will of any kind and that he had told Mr. Parker the same thing, although she knows the date of the will was October 25th, 1910; that he repeated over to her almost every day the same thing about the boys would get away with the property and that she thinks after the will was destroyed he said, "I think they will do some way to get away with the property if they can." That when Marvel brought her father he said that her father wanted to come and he brought him.

On redirect examination she said that her father told her the mortgage on the farm had been paid; that he had told her he had given Marvel the money to pay it, let him have \$2,800; that she destroyed all of the [142] papers that were worthless before 1913 and saved no letters back of that date as they had built a new house and moved, although she had letters from her father before 1913 written to her, only just a few lines at the time, from California; that all of the letters are in her father's handwriting

(Testimony of Jerusha Crabb.)

and she identified them (page 142, marked exhibit 1 to 11). Responsive to questions propounded by the presiding Judge, she stated that when she saw the will she could not recognize the handwriting of the will but did recognize the signature of her father thereon and that she believes it was signed "T. J. Watts," as he always signed his name that way; but she does not know by whom it was witnessed—does not remember the name.

On further recross-examination she stated that after her father came to her place the last time, 1914, he told her that he had let Marvel have \$2,800, \$2,000 of which was to be applied on a debt, and the other \$800 held by Marvel for her father's traveling expenses; that "he talked about his business all the time, and to everybody, everyone"; talked about it to Mr. Parker, to her and to her husband different times; that he kept talking about these things "so much"; that he would be quiet a while and then would start in on the same thing again and would sit a while and talk about something else. [143]

Testimony of John Crabb, in His Own Behalf.

JOHN CRABB, one of the plaintiffs, testified that he got acquainted with T. J. Watts in Umatilla County in the year 1884; that he and his wife did not visit at the home of Mr. Watts very much until after Watts and wife were separated, six or seven years ago; that thereafter Watts came to his home about twice a year, usually in the spring and again in the fall, staying about a month or six weeks at the time,

(Testimony of John Crabb.)

staying all winter one time; called his home at Marvel Watts' at Athena; but asked as to where he lived during those years witness answered he traveled around and stopped where he wanted to and stayed as long as he wanted to; lived with a man named Skelton a while; he went to Skelton's every year except one, most years oftener, and with Tom Page in California a while, spending he thinks about four winters in California, was in the Willamette Valley part of one winter, and wrote letters to his wife, Mrs. Crabb, about once in two weeks or three weeks, and that his relations with Mrs. Crabb were very friendly, and they seemed to enjoy each other's association and spent many hours talking together (page 152); that the first time he knew of a will his wife told him and that he knew Mr. Parker wrote for it, that he and Mr. Parker were great friends, and that it came in about four days, he thinks; that Watts asked him to send for it but that neither he nor his wife would do so; that he was not present when the will was destroyed but Watts told him he had burned it up and further told him that he didn't want it at the start, had burned it up and was glad of it; that he heard him say he had given Marvel money to pay off a mortgage, and that it was paid, and further told him he was [144] out of debt—didn't owe anybody anything; that he talked about his property every day and it seemed to be on his mind more than anything else the last few years; would talk about how much wheat he raised, how much money he got for it, how much land he had, how the boys were

(Testimony of John Crabb.)

farming it. That he never heard him say what he was going to do with his property; that when Watts came there in the spring of 1914 "he was not what I call sick—he could eat a good hearty meal three times a day—but he was so feeble that he couldn't walk without being braced or steadied," and that he continued in that state of health ten or twelve days (see page 156) when he took the bad sick spell and the doctor was sent for on the 3d day of April; that on that evening Marvel Watts, his mother and family came between five and six o'clock, but Watts had got worse about two o'clock in the afternoon; that Watts was very deaf, spoke so loud that he would wake everybody up; that after the 3d day of April he would seem to talk all right for a few minutes about something that had happened a good many years ago and "thinks that he had told over thousands and thousands of times things that would come to his mind and he would tell it pretty good," then would have a bad spell and would forget what he wanted to tell you and not finish the sentence; that during that night, at eleven o'clock Marvel phoned for Dr. McIntyre who came and stayed the rest of the night, and the next morning Dr. Mitchell was also called and came about eight o'clock and the two doctors worked on him until about noon on the 5th day of April; that "From [145] the 3d of April to the 11th of April, when he left, he got some days so he seemed to be all right, talked about something that had happened a good many years ago for a few minutes at a time," and the balance of the time

(Testimony of John Crabb.)

he would say most any kind of thing; could not even raise up in bed without help; was very patient about being waited on, very considerate and seemed to think it "was very nice of me" for waiting on him and thanked him for it; was very good-natured and good-humored; that "I have taken care of a great many old people and he was an exception for he was not cross nor he never complained of the way he was taken care of, but was great to complain of pains"; that he did not consider Watts was sick—considered he was just worn out; that Watts was taken care of in the very best way that could be on a farm; that Watts was kept in a good bed with the best of springs, good, new wool mattress and feather-bed which seemed to suit Watts very well, and that the bed and room were kept as clean as could be under the circumstances, the bedclothes changed every day; that he had a kind of leakage of urine; that Dr. McIntyre came once a day excepting one day when he was there twice; that Watts did not want to go home with Marvel at first but told him that Marvel had come to take him to Athena, and, the next morning, he went into the room where Marvel and Mr. Watts were and that Mr. Watts told him he was going to Athena, that Marcel had come to get him and he was going with him, and further said, "I have made arrangements with Marvel and he is to be the administrator of my property, and he has agreed that the [146] property shall be divided into three equal parts and that Jerusha shall have her part of the property," and that Marvel was standing right there

(Testimony of John Crabb.)

and that Mr. Watts took witness by the hand and witness said to him, "That is all right. Now, Daddy, you needn't bother any more about it," and he seemed to be perfectly contented; that he and Marvel carried him out of the house when he went away; that when medicine was given to him it stimulated him and livened him up so that he was brighter than he was other times when it was faded away"; that he did not go to the train with Mr. Watts when he went away and that he never saw Mr. Watts any more until after he was dead.

On cross-examination he said that Mr. Watts was very deaf, liked to talk awfully well, said he had sold his wheat and that the boys had turned him over the money and Marvel had paid the debt, had given Marvel \$2,800, told him about it every day, told him Marvel would be administrator of the estate the day he was taken away; further said that Marvel had agreed to give his wife one-third of the property, but prior to that time he does not remember any conversation in regard to his wife having one-third of the property until about a year before the last time he was there before (page 168) when he heard him say she would have one-third of it and he thinks he had heard him say the same thing a great many times before, but knows that he did say it those two times; that the day he left "he was strung up to the highest notch. They were going to move him and they gave him all (medicine) that they thought he could take for the trip he was going to take," and that he was brighter, could talk, could [147]

(Testimony of John Crabb.)

come nearer telling "you anything than he could before. But whether he was in his right mind or whether he was nervous, he was kind of excited"; that he talked about other things in a kind of excited way; that at other times prior to that day when he had a dose of medicine about five minutes, or ten—seven or eight minutes—he would begin to talk and could talk right along for "maybe an hour" and after that would grow stupid; that Dr. McIntyre prescribed the medicine for him; that it was the second or third day after Watts came that he—witness—was asked to write for the will; that Watts could write his own name—he could have written for that too (page 170). That Watts got a pencil and marked on a piece of paper to see how he could write, could write his name, could write most any word, but couldn't write as good as he would like to, his hands were "drawed out of shape"; was able to feed himself after his food was cut up for him until about the time he had the sick spell, used his left hand mostly; that the will came back three or four days after it was sent for and his wife told him about it being destroyed the same morning it was destroyed, told him the circumstances about her being left only \$200; that the morning he had the bad spell when he (witness) went away Watts was sitting by the stove talking with nothing apparently the matter with him except old age, and witness came home between four and five o'clock; that the operation was performed the next day after he had the bad spell (page 173); that he does not think Watts

(Testimony of John Crabb.)

was in his right mind—was not himself at all—at any time after the operation except when medicine was given [148] to him. That he didn't hear any conversation about Mr. Watts not wanting to go to Athena because the boys would try to get him down there to get him to deed his property away—heard nothing of the kind; never did hear him say that the boys were trying to get his property away from him (page 176.) I heard him talk about his divorced wife—seemed to dislike her very much—didn't like her at all.

On redirect examination he said that he did hear Mr. Watts say that Homer wasn't honest and would get the property away from his (witness) wife if he could and said that lots of times with other stories he told every day.

On recross-examination he said that he heard Watts say a good many times when he was there the last time that Homer wasn't honest and would get the property away from his (witness) wife, and said it when he was there the first time—back in 1910—1911; that it was common talk with Watts back in 1910, 1911 and 1912, that Homer would get the property away from his wife if he could; that Homer was dishonest and would get the property if he could (page 177) and that Watts said this every time he saw him page (178), and that it was common talk with him in 1912, but that Watts thought Marvel was a pretty good fellow and would be his administrator, and that he thought Marvel's wife and Marvel's

(Testimony of John Crabb.)

daughter were "awfully nice" and found no fault with them in any way and that they were very nice to him. (page 178); that he didn't talk any nicer about them than he did of his daughter's children; that he seemed to think much of her children too—that he didn't know as there was any difference. [149]

The plaintiffs, at this juncture stated to the Court that outside of some testimony in relation to the value of the property their case was concluded. Whereupon the defendants interposed a motion for an order to dismiss the bill of the plaintiffs upon the ground that they had not offered evidence sufficient to overcome, or even to balance the answers of the defendant called for and made under oath (pages 180-181).

Therefore the next day, April 7, 1917, Mrs. Crabb, one of the plaintiffs, was recalled and stated that she wrote letters to her father regularly but by some means at one time he failed to get them and wrote her every week until she finally registered a letter to him which he received. [150]

EVIDENCE OF DEFENDANTS.

Testimony of Homer I. Watts, in His Own Behalf.

HOMER I. WATTS, one of the defendants, testified that he was forty-one years old, was born and raised in the vicinity of the lands described in the pleadings, and made his home with his parents on the farm until he was about nineteen years old, when he would be away from home for a while but would

(Testimony of Homer I. Watts.)

return every summer and do harvest work; that there were five children of the marriage of his father and mother only two of whom were surviving—himself and Marvel Watts; that his mother died in March, 1915 and his father in April, 1914; that his parents were divorced in 1909, the mother keeping house and living in Athena and the father making his home with Marvel, that he is mayor of the city of Athena, serving his fourth term; that his father came to his home in February, 1908, badly injured, stayed there until June when he went to Marvel's house; this was before his parents were divorced, the parents staying away from each other a year before the divorce; that while the father made his home with Marvel he would go to California, to Spokane and would usually spend three or four weeks every summer in the mountains.

That on the 14th day of April, 1914, in the afternoon at his home in Athena he wrote deeds for his father, marked for identification Defendants' Exhibit "B" and Defendants' Exhibit "C," "B" being the warranty deed from his father to Vernita E. Watts, dated the 14th day of April, 1914, recorded in Book of Deeds, Volume 77, page 373; and "C" warranty deed executed by his father to Jennie Anderson Watts, same date, recorded in same book at page 372 of the Record of Deeds for Umatilla County, Oregon; that his father came to his home from Jerusha [151] Crabb's on the 11th day of April, was given a bath by witness and told him about the will being destroyed and further said, "I have made up my

(Testimony of Homer I. Watts.)

mind what I am going to do with my property as I suggested some time ago, that is going to give a part of it to your mother and I am going to provide for Vernita because she is a cripple and Marvel's wife. The balance of it I am going to leave to pay up the debts, and I hope you children will get good friends because you all have enough property. Let property not divorce you children any longer"; that this was on Saturday evening and he further said, "I want your mother to come over to-morrow," and she came, "I don't know whether I called her or how she came," and they had a lengthy talk, a part of which witness heard; that his father asked her how she was getting along and said to her, "Now, Lizzie, your time and my time for life is not very long and I have made up my mind to provide for you so you will not want." "My suffering during the last years has been intense" (page 189). "I want you to have every care that can be cast upon you," and asked her forgiveness and she asked the same thing of him; that his father wanted to know how much property she had and she told him she had plenty to keep her and that the boys had been good to her and that she did not know as she cared about property at all; she says, "the children that have made it are entitled to it and I would just let it go that way." That his mother stayed there that day but possibly went away that evening; that the same evening or the next morning he had thoroughly decided what he would do with his [152] property and wanted him to fix the deeds. "The reason I think it was

(Testimony of Homer I. Watts.)

that evening is because I am under the impression that on Monday morning I asked him to go down town with me—if he wouldn't go. It might have been on Tuesday morning that I asked him that, but I am under the impression that it was Monday. He said that it was too cold and he said he wanted to—why couldn't I fix them up and bring them up there. I said I could but I would prefer taking you down to the office if you can go. Well, on Monday I didn't take him. That conversation might have occurred Monday morning—I don't know, but he directed me how he wanted the deeds drawn, and he directed me that he wanted—No, excuse me just a minute. He said that he had intended to give the lower place—that is the 320 acres that was deeded to Vernita, to my mother so that she could have the income of it during her lifetime, and the remainder over to the little girl" (pages 190, and 191). That his father then directed him how he wanted the deeds drawn, saying that he would deed some land to Vernita because she was a cripple and that "she has been closer to me possibly than anyone else in life during my old age, being around me so much," and he wanted the other deed fixed so that "Marvel's wife takes the title to the property, and I will take the income off of it because that will be plenty to keep me," and that there would be eighty acres left with which to pay the debts, and further said "Now, Homer, Jerusha understands how the property is to go and why she is not getting any of it, because it has been a mutual understanding that she got her

(Testimony of Homer I. Watts.)

property from [153] Uncle Marvel," and that Marvel (defendant) would have no objection as the property would go into the family; that he told his father he would prefer that somebody else write the deeds but that father said to him, "you are the only one that is going to cause a lawsuit in this matter and I want you to attend to it and attend to it right"; that he told his father he would not cause any lawsuit; that he went away from the house but came back about eleven o'clock to take his father to the office and fix up the deeds there, expecting to get Mr. Le Grow to draw up the deeds or to witness them, as Le Grow had done a great deal of his father's business at the bank, and that when he and his father got nearly to the bank Mr. Le Grow was coming up the street; that he and his father then went to the drug store and got some medicine, that his father called Byron Hawks, the druggist, who came out of the store to the automobile and talked to his father while he went into one of the stores; that there were other people there who spoke to his father—Henry Dell, Sam Hut, George Winship, Jack Vincent, Sam Booher; that Byron Hawks filled his father's order for medicine and they drove away a distance of about five miles, returned to his home in Athena and started to drive out to the ranch. The roads were rough and instead of going to the ranch they went in another direction; "I talked with father that day at some length both about the property," "got back home between twelve and one o'clock, when his father was placed in a chair by the

(Testimony of Homer I. Watts.)

stove where he ate his dinner; that when he (witness) started away his father asked him to come back with the deeds; that he [154] went to the office, wrote the deeds, went back to the house with Guy Jonas but his father was asleep. "And Mrs. Carden, who was waiting on him, had asked me prior thereto to come home early in the evening so that she could go up home after something or other. And when I came in—I had been much longer than I expected to be—and I told my wife that she could take Mrs. Carden to the house if she wanted to. No, I told her to take the car and takes Mrs. Carden. That is what I told her. So she took the automobile and took Mrs. Carden and they were gone possibly, forty-five minutes or an hour. I think either Mrs. Carden or my wife said to me 'How long will you be?' and I said 'Some little time if you want to go out for awhile'; and whoever it was said they would be gone some little bit; they would take a ride or words to that effect." That Mrs. Carden, the nurse, and his wife went away in the automobile, leaving himself, Guy Jonas and his father at the house; that he and Jonas helped his father out in the front room where his father talked with Jonas, asking him about different things in the family and "father or I" spoke about the deeds; that he took the deeds out of his pocket read them to his father carefully, read each one separately, discussed the deeds with him, the description of the property, and that his father said. "That is the way I wanted the property fixed"; that his father took hold of the pen but his

(Testimony of Homer I. Watts.)

hand was crippled and he said to witness, "Write the name for me," which he did and his father touched the pen as he made the mark for him, and he and Guy Jonas witnessed them; that he had his seal with him, took his father's acknowledgment to the deeds. That his father [155] asked Guy Jonas to sign as a witness. That his father was sitting in an armchair at the time; that after the deeds were signed he gave them to his father, sat and talked with him until the women-folk came, when he and Jones put his father to bed; that his father gave the deeds to him and told him to give them to Marvel Watts or record them; that he took the deeds to his office, gave them to Marvel the next day, he thinks on Wednesday noon, had some talk with Marvel about it, and thereafter Marvel gave the deeds back to him and asked him to record them the next day as he was going to Pendleton to try a case. "I took the deeds and put them in my pouch. I came down Wednesday night to the dance. Thursday morning I came back—I was late because I had been out late. I was busy in court all day and did not record them until—Friday I was busy all day and didn't record them—as a matter of fact I believe they slipped my memory more than anything else—and I told him that I didn't record them—I have it on Monday. I might be mistaken about that, but I know that he said it looked to him like I would attend to anything when I was asked to." That witness was busy here in Pendleton Thursday and Friday trying a law case; gave the deeds back to Marvel and did not see

(Testimony of Homer I. Watts.)

them any more, as he remembers it, until his sister had some proceedings in the county court for an accounting.

That he is an attorney at law, practicing in the courts regularly. That regarding the land deeded to Marvel's wife, his father wanted it fixed so that he could get the income as long as he lived; that his father paid very close [156] attention to the matter and said it was just as he wanted it; that he recognizes the two instruments, Defendants' Exhibits "B" and "C" to be the identical instruments executed by his father on the said 14th day of April, 1914; that his father knew every piece of land he owned by legal description and could tell whether it was in section 31, section 32 or what, knew them by memory, and that when he read the deed conveying the land to Marvel's wife his father told him that he had it in the wrong section and that he read the description again very carefully and his father said that it is right; that his father was hard of hearing but that he could make him understand by getting up close to him and talking to him; that Guy Jonas was present during all of the time of the execution of the deeds—went with him to the house where the deeds were executed and then went away with him thereafter. That he never did talk to his brother, Marvel, before the execution of the deeds, about their father conveying property in any manner; "that father's property was never talked over between us boys" (page 202). That his father did his own business and was not a man to be controlled, and that he and

(Testimony of Homer I. Watts.)

Marvel never talked the property over until after the deeds were executed, and at the time he delivered the deeds to Marvel; that when his father and mother had a property settlement the father gave to the mother property in Athena which sold for \$700, and also gave her 160 acres of land which was afterwards sold by her to Marvel and himself for \$11,000; that after his father and mother were divorced they were better friends than he had ever seen them before—their trouble was [157] incompatibility and after they were divorced they visited with each other, and when his mother would be sick his father would visit her frequently, sometimes every day; that his mother had cancer of the stomach and had poor health the last few years of her life; that after they were divorced they would both visit at the home of the witness frequently. That he never did prepare a will for his father and never saw one that his father had prepared, but heard his father say before he went up to Jerusha's that he had a will and that after he came back from Jerusha's in April, 1914, his father told him about the will being destroyed and said to him, "It don't make any difference, Homer. I am absolutely satisfied with it, I have made up my mind what I am going to do with that property"; that his father did his own banking, his own transactions, and didn't talk property to him to any extent. That he does not remember having seen his sister, Jerusha, until he was about ten years old when she and her husband came there and that he saw her only three or four

(Testimony of Homer I. Watts.)

times after that when she would stop at his father's home in passing through the country, usually stopping over night, stopping one time nearly a week; that he does not remember seeing his sister from the spring of 1908 until after his father died; that he would not have known the woman (page 207); that when she came to the funeral he talked with her a great deal, told her that the last two days of his life he was unconscious and that she said to him that it was too bad that Marvel didn't let him die while he was up at her place and be out of his misery, as he only had a few days anyway and that she further told [158] him if Marvel hadn't sent to Colfax and gotten a doctor her father would have died and been out of his misery.

That in talking over property matters with his father after his father was brought to his place from Jerusha's his father said to him, "Now, Homer, I am not going to leave any of you anything so you will have nothing to law about," and that he told his father it was entirely satisfactory, in a sarcastic manner (page 209), and that his father further said that while he was up at Jerusha's she didn't feel right about the boys getting the property and asked him to send for the will which he did, and that on the morning of the day that Marvel came to Jerusha's they had gotten a phone call that he was coming and that Jerusha got the will, opened it, and asked him if he thought it was a just will and that he told her possibly it was not and possibly it was and that she must remember that she was raised by

(Testimony of Homer I. Watts.)

her uncle and got her inheritance there and that she had not helped to make any of the property, and that she insisted the will was not just and that she had been a hardworking girl and had not had the opportunities in life the boys had had and wanted him to destroy the will. "Father says you may destroy it if you want to, and during the discussion the way he explained it to me was that she gave him the will. He took it in his hand and she said, 'You can throw it in the stove.' Father said, 'That is satisfactory, Jerusha, we will just burn it up.' And that she and the girl raised him up and his arm was weak, he said, and he had it in his right hand, if I understood it right. Jerusha lifted his hand and he threw it in the stove. [159] Father said, 'That is perfectly satisfactory, Jerusha; I am willing for the will to be destroyed.' " That his father after telling him about the destruction of the will, further told him he had heard so much talk about property since he came up to Jerusha's that he knew there would be trouble if he tried to divide it as he had expected and that he had made up his mind about deeding it away (page 210), and that his father further said to him, "Now, Homer, you are most likely one to cause a lawsuit and I am going to insist on you fixing the property, put you on your honor that you are not going to deal with property or cause any lawsuits." That he himself has never gotten any property out of his father's estate; that they were poor people and of course he was provided for the same as the other children, and that when

(Testimony of Homer I. Watts.)

he went to school he always paid his own way with the exception of about \$450 which his father advanced to him at different times when he was in school and that he endorsed his note for him for over \$1,000, but that after he returned from Harvard University he and Marvel got a lease on his father's lands and have been farming them since.

That prior to the execution of the deeds he never had at any time talked with Marvel Watts, or with the wife of Marvel Watts about how his father was going to convey the property, and mentioned it for the first time when he gave the deeds to Marvel (page 212); that there is absolutely no arrangements or agreement at all between himself and Marvel Watts and the other defendants or any one of them by which they are to be the real owners of [160] the lands and receive the benefits therefrom (page 213); and that he and Marvel had leased the lands from their father paying him one-third of the crop as rental and they have been farming the lands deeded to Jennie and Vernita since the death of his father, carrying on the farming in the same manner that they did prior to the death of the father, and that he himself has no agreement or understanding with Marvel Watts or any other person that he is to finally or at any time become the owner of any part of the real property described in the pleadings (page 214).

Upon cross-examination he stated that his father had first acquired 160 acres of land, then with money belonging to his mother they bought 40 acres more

(Testimony of Homer I. Watts.)

of said land (page 215); thereafter he bought 160 acres more when witness was about ten years old and part of which is land deeded to Vernita Watts; then about 1896 about 135 acres more, thereafter another quarter section which was given to the mother in the divorce proceeding; that his father conducted his own affairs.

“Q. Now, you and Marvel always thought that because Jerusha had gotten something from her uncle’s estate, and because you had as you claimed helped to make this property, that she ought not to have any of it, didn’t you?”

A. I am not speaking Marvel’s thought; I will speak my own only.

Q. All right.

A. I gave it but little thought, Mr. Bennett. I gave it no thought hardly at all, because father conducted his own affairs in life. I did hear father on numerous occasions telling his neighbors about his daughter [161] Jerusha and about her getting the property and that the boys would get this property. Now I have heard him say that.

Q. Now, hadn’t you talked it over, you and Marvel among yourselves, that you had helped him make this property, as you claimed, and that she had had a part of her uncle’s and so she ought not to have any part of this?

A. That is not a fact.

Q. You claim that you never talked that over at all?

A. Absolutely claim that I never talked it over

(Testimony of Homer I. Watts.)

with designs and purpose. If it was spoken it was spoken in the family circle.

Q. Designs or otherwise, had you talked that over?

A. We had made it no topic of conversation. There might have been some mere passing word between us, something of that kind. I do remember this, that that subject was talked between my father and mother in the family at different times, of father saying what Jerusha got from Uncle Marvel and she would get more than he was ever able to give the rest of his children. I remember that.

Q. You do remember, then, it being talked over while your father was living with your mother?

A. Years ago when I was a child.

Q. Well, now from that did you and your brother Marvel join in that conversation?

A. It was not our conversation.

Q. Well, did you join in it, did you have anything to say about it at all? A. No.

Q. Did you at any time express yourself to each other that you boys ought to have that property and she [162] ought not to have any portion of it?

A. I positively deny the charge.

Q. You never did talk with your brother about that?

A. I don't believe I ever said it in my life.

Q. In your family circles at all? A. No, sir.

Q. Now, then, at these times when this thing was talked over between your mother and your father at the family circle, Jerusha Crabb was far away—she was not there, was she?

(Testimony of Homer I. Watts.)

A. I don't believe I said it was talked over; I said it might have been talked over, if I remember correctly. That is the only answer I am going to make to it. It might have been talked over. I might have heard it.

Q. Do you mean to say now that you don't know that you ever did hear that matter talked over?

A. I don't know that I ever did.

Q. Between your father and mother?

A. No, that is what I mean to say. I say I might have heard it.

Q. Didn't you say a moment ago that you had heard that talked over frequently?

A. Well, I said I might have heard it; I don't say that I didn't—I don't say that I did."

That he started to school when he was about eight years old, about a mile and a half from home, walking back and forth, the school term being about three months in the fall and three months in the spring and that when he got older his father would keep the boys out of school possibly a week or ten days in the fall and spring to help him with the farm work; that when he was about ten or eleven years old he began to work out for wages and bought his own clothing but boarded [163] at home and went to school and that he never went to school at any one time in any one year longer than five months until he was sixteen years old, thereafter he attended the Athena High School about seven months, had to go four miles, but boarded at home, and then the school at Weston in the fall of the year 1893 for about

(Testimony of Homer I. Watts.)

thirty weeks, still boarding at home, going five miles; that when he was sixteen years old he started to sewing sacks in harvest at \$2.00 per day, would take his harvest money and buy clothing and help buy books and that his father would help buy books for him; that he was in the Weston school about a year and three-fourths, stayed at home and worked all of the next year, then went to school at Monmouth, Oregon, for forty weeks, his father furnishing him the money—\$225.00—his school bill that year, and also furnished the money for Marvel to go to the University that year; that he began teaching school in the fall of the year 1897, and taught one school year at \$40.00 per month—about nine or ten months, boarding away from home three months and the rest of the time at his home; thereafter he went to school about seven months in California while he was there helping to take care of an invalid brother; then went to school three years at Eugene, beginning with the fall of 1900, quitting in 1903, taught school a year at Ashland Normal, then went to Harvard University three years; that his brother Marvel also had a college education and his expenses paid about the same; that his father never contributed anything towards educating Jerusha and that she didn't have any college education. His mother died in 1915 and left a will in which she gave \$1,000 to Vernita Watts, a house and lot to his wife, and the balance of the property to himself and Marvel. That he [164] and Marvel were farming about 1,000 acres of land at the time their father died; that Vernita Watts

(Testimony of Homer I. Watts.)

is the only child of Marvel Watts and wife; that he never had anything to do with managing his father's business and that his father was a man who didn't talk to him much about his business, was an independent man, had his own convictions and controlled his own mind, was of sober and religious temperament, had been a minister, nothing deceitful about him and when he said anything on business affairs he meant it and considered his word "the binding link." That he knew when his brother Marvel went up to get his father and bring him down—knew he was going to bring him down. It was arranged before Marvel went up that he was to bring him to my house; that he didn't know how many winters his father spent in California after he was divorced, but thinks it might have been one or two, possibly three. He would generally go down in November and stay until the spring opened up in March or the first of April; that he went to the Willamette Valley one winter, but don't know how long he was gone; didn't know he had ever been to Kennewick but once; that was in the fall of 1913; don't know how long he was there before; don't know how long he stayed at Athena the last time before he went to California; knows that he spent part of the time during the last five or six years at Jerusha's but don't know how much or how many times. Remembers that two or three different times when he came down from Spokane he spoke about seeing her as he came down and as he went up; that Marvel went after his father to California in response to a tele-

(Testimony of Homer I. Watts.)

gram; thinks he heard he had also received a letter from Jerusha which she had sent down. He thought she sent father's letter to him. That was the [165] middle or latter part of February. That Marvel was gone to California three or four days or a week. When he came back father stayed at Marvel's house until some time about the middle of March and then went up to Jerusha's. "I didn't see him any more until Marvel brought him back on Saturday, April 11th; when they brought him back they took him up on a dray and stopped at my office, and I got on the dray and went up to the house with them. Don't think any arrangements had been made about a doctor or nurse before he came, but I am not sure." That before his father went up to Jerusha's he told him he was going to visit her awhile and then come back to his place and visit; that when his father returned from California in the spring of 1914 he complained of pain in his feet, complained of his feet and legs hurting him and was not as well as when he left for California; went from Marvel's home to the home of Jerusha and he did not see him until he was brought back to his home in Athena on Saturday, the 11th day of April, 1914. The next morning, Dr. Sharp and the nurse came. Dr. McIntyre was also there that morning but his father was asleep and did not talk to him and Dr. McIntyre said, "If he is asleep, just let him sleep; the other doctor will look after him"; that he first noticed his father getting low, unconscious, on Saturday, the 18th of April; that his father always had a strong voice.

(Testimony of Homer I. Watts.)

“Q. Now he came home on the 11th? A. Yes.

Q. Do you claim to have had any talk with him about business affairs that day?

A. I claim to have talked with him that night, and he didn't let me go to sleep until two o'clock that night either. [166]

Q. Now, the next day, the 12th, do you claim to have had a talk with him about business matters again that day?

A. Yes, sir; I talked to him Sunday—yes, I think I did. Now, Sunday was the day he talked to mother, and I think I talked to him that evening—although I can be mistaken about that; if I didn't that evening it was the next morning.

Q. Did you talk to him about business on the 13th?

A. Well, I don't know; I have got it in my head that I did; I have got it in my head that I asked him to go downtown with me that day, or asked him to let me take him downtown that day.

Q. Do you remember clearly whether you did or not?

A. No, because I have been told that I did not.

Q. Now, during the time that he was there, how many times did you take him out riding?

A. I took him down the one time.

Q. Just the one time? A. Against his wishes.

Q. You took him against his wishes, you say?

A. Yes.

Q. And that is the only time you did take him?

A. Yes.

(Testimony of Homer I. Watts.)

Q. That is the only time he was out of the house while he was there?

A. I don't want to say yes or no to that; the chances are it was." (See pages 245-6-7).

That when he took him out he meant to take him to his office and write the deeds and his father said there was no use of it as (witness) could write the deeds and bring them to the house, the deeds were written the same day that he took his father out riding; that while he and his father were out driving they were gone about an hour and a half. That Guy Jonas came to his office to see about [167] a note he had for collection and went with him to the house when he had the deeds with him, at which time Jonas was in the saloon business but was "a friend of mine the same as the rest of the people in the town, I suppose." That he took his father out of bed and put him in an automobile that morning and that he was the one who put him to bed after he got back. (See page 253.)

"Q. At the time the deed was drawn you had a good deal of experience in the matter of the disposition of property by old people in view of death, hadn't you, drawn wills and deeds, and so on?

A. I cannot say that I had had any more than any other country lawyer would have during the time I have practiced, possibly gotten my share of it.

Q. About that time were you one of the attorneys for Mabel Warner in the famous Mabel Warner will case? A. I was at one time.

Q. When was that?

(Testimony of Homer I. Watts.)

A. The last time the case was up I was attorney for her. I think it was before this deed was drawn.

Q. Now, at the very time this deed was drawn, you were also engaged in a will case involving the estate of an Indian or half-breed out on the reservation, who you claimed had willed his property to the amount of about \$15,000 to you?

A. Well, Mr. Le Grow will answer all that. He is here. He will answer all that.

Q. Well, I am asking you.

A. Yes, he made the will. Mr. Le Grow is the man that made it, I believe.

Q. You testified in that case your wife drew the will. [168]

A. She drew the will, but it was executed before these people.

Q. But your wife drew the will?

A. Yes, under the dictation of the old gentleman.

Q. Now, in that will he purported to have given you practically all the property he had, didn't he?

A. Yes, he did, yes.

Q. And at the time this came up you were in a contest with his heirs over the validity of the will?

A. 1914—let's see. I don't know whether I was or not. I expect that is right, yes.

Q. Yes, and this man Guy Jonas was one of your witnesses?

A. In that will contest? I don't know whether he was a witness or not. Practically two-thirds of Athena were witnesses on that thing, but I don't re-

(Testimony of Homer I. Watts.)

member whether Jonas was or not. I expect that he was.

Q. And he was one of your principal witnesses, wasn't he?

A. No, he was not a principal witness; nowheres near it.

Q. Wasn't it by him that you proved or undertook to prove the different sums of money you claimed to have let this Indian have?

A. Guy might have known something about it but he is not the one that proved the money I let him have, by any means, nor is not the one to prove any material issue in that case that I can remember of at this time.

Q. You had him testify that you had left a good many sums of money in his saloon for this Indian at different times, and he had paid it over to the Indian when he came in?

A. I would rather the record in that would be shown, rather than for me to go to work to reiterate.

Q. Don't you remember that?

A. I don't know; there were volumes of that.
[169]

Q. Don't you remember leaving money there at his place for this Indian?

A. Possibly I did—possibly I did. I don't say that I didn't.

Q. Don't you remember whether you did or not?

A. At this time I do not remember." (See pages 251-2-3.)

That when he wrote the deeds and got back to the

(Testimony of Homer I. Watts.)

house with Guy Jonas, his wife, father, Mrs. Darden and her little girl were there, but that Mrs. Carden, his wife and the little Carden girl didn't stay hardly at all (page 255), went away, as Mrs. Carden had been wanting to go home that day—went away in an automobile; that he had no talk with his father about the deeds before she left and that his father *work* up just about the time the automobile started, called to him and he went into the room, at which time he, his father and Jonas were the only persons in the house, and they stayed there until his wife and Mrs. Carden returned; that Jonas went back with him to town; “that father was still sitting in the room when Mrs. Carden came back.” When he went in the room his father wanted to get up and ask him something about the deeds; Jonas fixed the chair and they sat him in the chair, and he talked to Jonas a few minutes asking him about old times and about his father, the Jonas family, as he was acquainted with the father of Jonas long years ago. The deeds were spoken of and he told his father he had them written, read them over slowly to him; don't remember where the deeds were when Mrs. Carden came back; had them in his pocket when he and Jonas left the house, gave them to Marvel Watts the next day that Marvel gave them back to him he thinks that evening, but that he himself did not have the deeds recorded and does not remember whether he gave them back to Marvel on Saturday or Monday but that Marvel claims that it was [170] Saturday; that the lands described in the deeds are all the

(Testimony of Homer I. Watts.)

lands his father owned except an eighty acre tract and there was no mortgage on it; that he did not have a dollar at the time of his death; that during the last five or six years before his death father had expended his entire income. There was nothing paid on the \$3,000 mortgage. (See pages 261-2.) There was a mortgage of \$3,000 on the lands deeded to Vernita; that about 165 acres—a little over half—of the Vernita Watts lands are in cultivation and is good land; that the eighty acre tract not deeded to anyone was sold for \$4,101. That the land that went to Mrs. Watts joins some land held by him and his brother in common; that he and Marvel in closing up the estate sold the eighty not conveyed and paid off the mortgage on the land deeded to Vernita; the eighty did not bring quite enough to pay off the mortgage and expenses and so there was nothing left for Jerusha or any of the children. That he was attorney for the estate and his brother Marvel was the administrator; that Mr. LeGrow owns the eighty now, and witness and his brother are farming it. LeGrow is the cashier of the bank and Marvel is a stockholder and director. (Pages 263-4-5.)

That his father was about eighty-two years old at the time of his death; that in his opinion the cultivatable land deeded to Vernita Watts is worth \$100 per acre and the balance of it about ten (\$10) dollars per acre; that the lands deeded to Jennie Watts would be worth eleven thousand (\$11,000) dollars for one parcel and about three thousand (\$3,000) dollars for the other. (Page 267.) [171] That before

(Testimony of Homer I. Watts.)

his father went up to Jerusha's he said, "If I get worse I will want one of you boys to come up and get me. If I get better I will stay up there for a while; then I could come down and visit you a while before I go away again"; but that when his father did come back he heard him say to his mother, "It is time, Lizzie, we fully understand each other because our time is not much longer for this world." That his father told him the will was destroyed the same day Marvel got up to the home of Jerusha's (page 270), after they had gotten a telephone that Marvel was coming. That the witness Parker was an old friend of his father and an old neighbor of theirs and used to stay at their house a great deal, and was an old neighbor of theirs (page 270.)

"When Jonas was at the office in the afternoon—whether I told him before he went up to the house or not I don't remember; but either I suggested that he go up to see father, or he suggested going up to see him. He was there at several different times. He was there at different times other than this day to see him." (Page 272.)

On redirect examination he said that the first time Guy Jonas came to the house on the day of the execution of the deeds was to see him about the note he had for collection over in Washington, at which time he and his father were getting ready to go out in the automobile and that Jonas helped to put his father in the automobile, and he told Jonas to come back to the office in the afternoon and he would tell him about the note, letters received concerning it, and

(Testimony of Homer I. Watts.)

that Jonas did come back in the afternoon to see about it, and then went with him to the house where the [172] deeds were executed; that in addition to being in the saloon business in Athena Jonas at one time "took over the Athena Hotel," run it for a time and then sold it; sold the saloon, bought horses for Jinks Taylor (page 272). That about two days before his father went to Jerusha's he was out auto-mobiling with him, going to a stock sale about five miles away; that his father made his home with him quite a while in the fall of the year 1912 and also in the spring of 1913 (page 273), his house being a little over a block away from Marvel's house, and he and Marvel having lived that near each other four or five years; that at the time of the execution and acknowledgment of the two deeds there was no difference, that he could see at all in his father's condition and as it was on Monday, Tuesday, Wednesday and Thursday—his mind appeared to be as bright as it ever was in his life; that when he and his father went to the Mansel sale about the first of March, his father told him he was going to give Vernita some property (page 276); that the first suggestion made by his father to him about deeding the property to Jennie and Vernita was after he had talked, on Sunday, with the mother of witness—thereafter, either Sunday evening or Monday morning, his father told him how he wanted the deeds written, and said to him, "Homer, you have no children, and Vernita is the only grandchild I have here, and she is a cripple, and I have been wanting them to doctor her more, and

(Testimony of Homer I. Watts.)

offered to pay her doctor bills if they would doctor her more, I am willing to doctor that girl," and further said to witness, "You can make it first rate in life because you are getting along well," and further said, "Marvel's wife has been better to me than ever my mother was, and she is certainly entitled to something for [173] the kindness she has shown me" (page 278). That his father had made up his mind absolutely without any suggestion on his part; "that was the reason I wanted to bring him downtown to have the deeds executed down there." (Page 278.) That after the deeds were written his father was out of bed several times, ate several meals at the table. (Page 279.)

"In answer to questions by Judge Wolverton, the witness stated that his father had died about eight o'clock, about three hours before the dates when the deeds appear to have been filed for record—that the deeds were not in his possession at that time."

"Q. (By COURT.) Are you and your brothers large owners jointly in real estate?"

A. Well, we are owners in this: A year ago last fall I started to go to Montana and he had a chance to buy some land out there, which he said if I would buy with him he would go halvers with me on it.

Q. You can answer shortly—are you large owners in real estate?"

A. Yes, about seven hundred or eight hundred acres." (Pages 280-1.)

On recross-examination, responsive to an impeaching question, witness stated that he did not tell Judge

(Testimony of Homer I. Watts.)

Fee and Judge Hannah and John Crabb that he had had the deeds recorded himself and that Marvel Watts did not so far as he knew know anything about the deeds until after his father's death. He denies any such conversation. [174]

Testimony of Guy M. Jonas, for Defendants.

GUY M. JONAS testified that he lives in Montana, is married, has two children, is forty-seven years old, is farming 300 acres of land there, lived at Athena, Oregon, for a time in 1907, returned again about 1910, and remained until about a year before the trial (page 284); that while in Athena he was in the saloon business, in the hotel business, worked for wages on farms, was acquainted with Thomas J. Watts, and that Watts claimed to be acquainted with the father of witness and all of his people; that he was a witness to both of the deeds in evidence, signed his own name thereon in the presence of Homer Watts and the said T. J. Watts; that he came to Homer's office on a little business, Homer was gone, and he walked up to Homer's house, spoke to Homer about the business but that Homer was going out riding and told him to come back to the office in the afternoon; while there he saw T. J. Watts, helped to put him in the automobile, went downtown, went back to Homer's in the afternoon with Homer about which time the women went away in the automobile, and Mr. Watts asked Homer to take him up, which he did, and then said to Homer, "Did you fix the papers?" to which Homer said, "I have got them in

(Testimony of Guy M. Jonas.)

my pocket.” Then Homer read them to his father, who corrected him on one piece of property, saying, “You haven’t that right,” and described the land himself to Homer. Homer told his father that was the way he had it and his father said, “Well, go ahead and read them again”; that Homer read them again and his father said, “That is the way I want them deeds fixed”; that Watts said he couldn’t write, couldn’t see the lines good, couldn’t hold the pen, and told Homer to write his name. Homer made the mark and his father put his hand on the pen while he was [175] making it; that witness then signed his name as he was asked to and Homer also signed his name; that no other persons were present than himself, T. J. Watts and Homer I. Watts; that at the time the deeds were signed, Watts was sitting in the front room in a chair, talked a good deal, Homer said, “Guy can sign that all right,” and his father said, “That is all right enough”; that Homer gave the deeds to his father who kept them in his lap a while, then handed them back to Homer, told him to give them to Marvel and have them recorded. That he asked Watts if he enjoyed the ride and he told him that he did; that he saw Watts the next day when he was asleep; that he never saw the deeds thereafter until he came as a witness in this case.

“Q. Now, prior to the time of signing these two instruments, when had you seen him, that is, how long before this day?

A. I had seen him, I think, a couple of days before then. I seen him the night they fetched him home

(Testimony of Guy M. Jonas.)

but didn't talk to him." (Page 288-299.)

That he used to see Watts often while he lived at Athena and talk to him, sat around the hotel and talked to him, met him on the streets and talked to him; that he did not observe any difference in the general condition of Watts the day he saw him make his mark to the deeds than when he had noticed before, only that he was sick (page 299), "Complained of being sick. As far as his conversation is concerned it run just as it always did ever since I knew him."

On cross-examination he testified that Mr. Watts was a little deaf but he could always make him hear him.

"Q. When you saw him then that day did he seem very sick and feeble?

A. Well, he was feeble, sure.

Q. And seemed to be sick? [176]

A. Well, he complained of being sick." (Page 290.)

That witness had gone to see Homer Watts that day about a note he was having him collect up in Washington—a \$300 note; that it was about eleven o'clock when he went to Homer's house the first time that day and that Mr. Watts, Marvel Watts, Homer Watts, Mrs. Watts and Mrs. Carden were there; that he went from his saloon up to Homer's office that morning (page 291) and that he himself left as soon as Mr. Watts was put in the car, he thinks that Bert Cartano was also there; that he helped Homer get Mr. Watts from the bed in the house to the auto-

(Testimony of Guy M. Jonas.)

mobile (page 292); that after he left it was possibly two or three o'clock in the afternoon before he returned with Homer, but that he has forgot and cannot give any definite time, but as near as he can tell it was between one and three o'clock. That it is about three blocks from Homer's office up to his house; that no other persons were present about the house when the deeds were executed than himself, Mr. Watts and Homer; that some quilts were fixed on a chair and Mr. Watts placed on them in the front room just before signing the deeds. (Page 297.)

That he don't know who he left in charge of his saloon while he was gone.

“Q. Now, Mr. Jonas, who owned that saloon that you were running there?

A. Why, I was supposed to own it.

Q. Well, did you own it? A. Yes, sir.

Q. Entirely by yourself? A. Yes, sir.

Q. Nobody else had any interest in it?

A. No, sir.

Q. Didn't Homer Watts have any interest in it?

A. No, sir.

Q. Was he backing you in it? A. No, sir.

Q. Did you have any money borrowed from him?

A. I did. [177]

Q. To run the business? A. Yes.

Q. You had money borrowed from him to run the business at that time?

A. I don't say what I am using the money for.

Q. Well, you were using it to run the business?

A. Not necessarily, altogether.

(Testimony of Guy M. Jonas.)

Q. Well, partly? A. Hum-m.

Q. And Homer was in the habit of being around your place a good deal?

A. No more than any of the rest of them, I suppose.

Q. In the habit of leaving money there for people?

A. Never left no money around the saloon for any people that I know of.

Q. Didn't he leave money there with you for John La Roque?

A. When I was in the hotel he left some money there for him.

Q. Didn't you testify in the case of Watts vs. La-Roque that he had left money there at the saloon at different times?

A. At the hotel, when I was running the hotel.

Q. Did'nt you testify he had left money at the saloon at different times with you?

A. At the hotel.

Q. I am not asking you about the hotel, but didn't you testify he had left money at the saloon for John La Roque?

A. I testified he left money for John La Roque at the hotel I used to run.

Q. I am not asking you that. I am asking you whether or not you testified that he had left money at different times for John La Roque at the saloon.

A. No, sir.

Q. In the case of Watts vs. La Roque you were a witness for Homer Watts? A. Yes, sir.

(Testimony of Guy M. Jonas.)

Q. You were there every day of the trial, weren't you? A. I was.

Q. (By the COURT.) Did you hear Homer Watts take the [178] acknowledgment to his father's deed? A. Yes, sir.

Q. What did he say?

A. I don't know just how he worded it, but he had that seal—the seal there—and he put that on. I am not lawyer enough to tell you the words that he said now.

Q. Can't you remember anything that he said about taking that acknowledgment?

A. Homer asked him something but I don't understand now what it was, the same as anybody would take an acknowledgment, I suppose though.

Q. How is it taken?

A. I can't word it—I don't know."

Testimony of David Taylor, for Defendants.

DAVID TAYLOR testified that he lives at Athena has been a resident of Umatilla County since 1869, except one year; is the father of Sheriff Till D. Taylor; is seventy-six years old, a warehouseman by occupation; has been in that occupation about thirty years. Got acquainted with Thomas J. Watts about September, 1870; lived five or six miles from him for a time, saw him often; met him at church, at different places; associated with him about as much as anyone else in early days; saw him a good many times after he was divorced; would call and see him when he would not be well; knows that he got his

(Testimony of David Taylor.)

shoulder hurt after he was divorced and made his home with Homer for a time and saw him at Homer's while there and talked with him; but after that time when he was in Athena he made his home at Marvel's but went off on trips—to the mines, to Medical Lake, to California; talked with him in March, 1914, at Marvel's after he returned the last time from California about property, about Tom Page, and old [179] acquaintances, his trip to California; that Mr. Watts told him Homer didn't seem to take any interest in him, didn't seem to care for him, didn't come to see him and that he was going to have a talk with Homer and his wife and see what was the trouble; told him about making a will in which he had willed the girl, as he *understand* it, \$500, and the rest of his property was equally divided between Homer and Marvel, but further told him that if Homer didn't look after him better or didn't pay more attention to him he didn't know that he was satisfied with the will and didn't think he was satisfied with the will; but said that "Marvel's wife would crawl on her hands and knees up the stairs to wait on him." (Page 305.) Witness thinks perhaps he himself told Mr. Watts that if one of his boys were to turn him down when he was old and could not help himself he would turn him down when it came to giving him anything. (Page 305.) Said he was going up to his daughter's in Palouse to pay her a visit. She wrote for him to come up and he was going up to see her and stay a while and come back. Further told him that Marvel had no

(Testimony of David Taylor.)

bedroom downstairs and that he couldn't get up the stairs very well and that Marvel's wife was sickly, and that Vernita wasn't able to wait on him, and that he was going to have a talk with Homer and his wife as to why they couldn't take care of him (page 306); that he saw Mr. Watts and talked with him two times before he went to visit the daughter, but saw him at Homer's place after he returned, at which time Mrs. Carden was present, but he does not remember the day of the week, or month he first saw him there; that when he saw him he said, "Hello, Uncle Tom, you are home again," to which Watts replied [180] "Yes, I have come back, Dave; I think there is some show now for Homer; Marvel told me that George Carmichael had joined the church; I think if he has there is a chance for Homer," and further told him that Homer had gotten a room for him and a nurse to wait on him. That they talked about other things (page 308); that Mr. Watts told him he was a little tired and further said, "I have been out riding; Homer taken me out riding. We started out to the ranch but didn't get out there though. I am a little tired but think I am all right after I get rested up" (page 308); that this conversation with Mr. Watts was in the afternoon; that he told Mr. Watts he had a chair and big can made for his mother-in-law and that he would have it sent to him and that Mr. Watts said he wished he would do so. (Page 309.) That he saw him again in a day or two at which time Mr. Watts said to him, "I sent for Lizzie to-day and she came down

(Testimony of David Taylor.)

and I told her if I had ever done her any harm or wrong I was sorry of it and asked forgiveness and she said she would forgive me," and that Watts further said that he told her if she didn't have plenty to keep her as long as she lived he would make arrangements, and that he further said, "Marvel told me she had plenty and Homer told me she had plenty." He said he didn't know how long he would live. "None of us are going to live very long; we are all getting old." That he went to see Mr. Watts at Homer's place, he thinks, three times, and the last time—on Sunday—he was "out of his head" and that he did not attempt to talk to him, only stayed a minute or two and that Watts died within a short time thereafter (page 311). [181]

(Examined by COURT.)

"Q. That was the second talk you had with him that he spoke about his wife after he came down?

A. Yes, the second time after he came down from Palouse. The first he was just talking about other things. (Page 313.) That he saw him no more after that day until he saw him in his coffin. That he and Mr. Watts used to attend church together. That Watts told him at one time his brother raised his girl (Jerusha); that she had a good start, a good deal of property, and that the boys had helped to make his property, stayed at home and worked, and he thought that she was not entitled to as much as the boys and that it was not necessary to give her much of his estate (page 314). That he could not see any difference in the condition of the mind of

(Testimony of David Taylor.)

Mr. Watts except that, he supposes, his mind was growing a little weaker as his body did; that he seemed to have "just as good a mind as he ever had, to my notion"; that it took Watts a little longer to get at anything and express it but that he talked just as rational as he ever did, and that this condition was true the day Watts told him he had taken a ride with Homer and was also true of his other conversations he had with him (page 315). That three or four years ago he heard Mr. Watts say Marvel's child was crippled and that he wanted to help the child and had told Marvel to spend his money in doctoring her and that he (Watts) was going to help her. That he had also heard Watts say that Marvel's wife "would crawl up the stairs on her hands and knees to wait on him" when she was not able to do so and that she would do everything she could as long as she had strength. (Page 316.) [182]

On cross-examination he testified that Mr. Watts told him he didn't consider that Jerusha should have an equal share in his property and that, as he remembers it, told him he had given her \$500 in the will and divided the balance of the property equally between the boys. (Page 316.)

"Q. Didn't he tell you whether Jerusha was good to him or not?

A. Oh, he said all the children treated him well; that is all except Homer; Homer didn't treat him well.

Q. He said she treated him well?

(Testimony of David Taylor.)

A. Yes; he said he was going up to see her and stay with her a while.

Q. He said she was good to him?

A. Yes, and waited on him.

Q. He seemed to like his daughter Jerusha, and he seemed to like Mrs. Marvel Watts, and he seemed to like the little girl? A. Yes.

Q. Now, he told you in that same conversation about the will, didn't he, that his daughter Jerusha didn't get really near as much as had been expected out of her uncle's estate.

A. I don't know if he told me that time or not but he must have told me—I don't know who else could. It seemed like—I don't know but what it was you, Judge; I don't know but what it was you told me, or that girl's husband that lives in Palouse; what is his name—Crabb. Somebody told me. Whether it was Uncle Tom or you or that other man, that after he adopted this child—he adopted two other children of some one, and they divided up and didn't get as much. I don't know but what it was the night that I talked with you and Crabb.

Q. Well, now, didn't you tell us that?

A. Well, if I did, Uncle Tom told me that but I think it was maybe you told me. [183]

Q. Didn't you tell us that—didn't you say that he told you that his brother had adopted and raised his daughter? A. Yes, that is what I said.

Q. That he promised to give her all his property—make her his heir, but afterwards adopted two other children and so she only got one-third; isn't

(Testimony of David Taylor.)

that what you told us that he said?

A. Well, I ain't sure about that, whether I told you that or you fellows told me that.

Q. You don't remember about that?

A. No; you got what I said, you know; you wrote out part that night.

Q. Yes, I know, and I read this over to you and you said that was right, didn't you?

A. That is the way I had it in my head, yes.

Q. You don't remember; your memory is not very good, is it? A. I think it is average.

Q. Well, you don't remember now.

A. Well, if I did, just as I said here a minute ago, Judge, I said Uncle Tom told me, or you, or that gentleman, but I am not sure which one. Now, Uncle Tom might have told me that.

Q. You don't remember whether he told you or we told you?

A. No, I couldn't say that; there were so many different conversations.

Q. You have talked with all the attorneys pretty nearly in the case? A. I think I have."

"Q. At different times?

A. Yes." (See pages 316-7-8.)

That Watts told him all of the children were good to him except Homer, and that he had also heard Mr. Watts say regarding Homer, "Didn't see how in the world he raised a [184] Republican Boy," and that witness also heard John Crabb, one of the plaintiffs, say that he had witnesses to prove they would not believe Homer on oath. That Mr. Watts

(Testimony of David Taylor.)

told him that if Homer did not change his way of doing he would change his will, would see Homer and have a talk with him (page 321); that Mr. Watts was 82 or 83 years old when he died; that he was weak but seemed to be in good spirits and moved about the room when he saw him upon his return from California the last time in March, 1914; that his mind seemed to be good, had rheumatism in his hand; that he never saw Watts try to walk after his return from Jerusha's but one time and that was at Homer's house—"he walked around to the foot of the bed and then back, kind of crawled around" (page 325), by holding on to the bed and by witness also holding him—could not walk without help, had grown feebler.

"Q. He had grown more feeble when you saw him the last time? A. Oh, yes, feebler all the time.

Q. Yes, getting more feeble and lower all the time? A. Yes, sir.

Q. And he continued to get gradually lower until he died?

A. I suppose so, yes." (See pages 325-6.)

That Watts told him he was tired, had been out automobile riding, started out to the ranch but didn't go all the way.

"Q. Now, you say that the first time you saw him after he came back was the day when he said something about having been automobile riding?

A. Yes, sir—it was a day or two days after when I had the next talk." (See page 326.)

Had a talk with him a day or two thereafter in

(Testimony of David Taylor.)

which Watts told him he had had a talk with his divorced wife (page 326); that Watts was deafer than witness and witness is hard of [185] hearing but that Watts had a strong voice and witness had no trouble in understanding him; that he liked to talk over old times.

Testimony of F. S. Le Grow, for Defendants.

F. S. LE GROW, cashier of the First National Bank of Athena, connected with that bank fifteen years, forty years old, testified that he knew T. J. Watts who was in the habit of doing business at his bank; that Watts largely conducted his business with witness; that his bank never had held but one mortgage against Watts and that it was paid after his death, but prior to his death Watts himself paid the interest on it—the note dated September 3, 1904, in the sum of \$3,000 with interest at 6½ per cent (page 331); that Watts paid the interest on the note himself in 1913 by check dated September, 1916, in the sum of \$210, witness writing the body of the check and Watts signing his own name to it; at that time no part of the principal had been paid (page 332). Witness also identified about eighty-two other checks, the larger part of which were drawn by the said T. J. Watts (page 334); that Watts was capable as far as he knew, that he couldn't say that he was a man that was easily influenced (page 335). That Marvel Watts gave him some deeds to have recorded about the time of the death of T. J. Watts and that he "evidently mailed them" as he was ac-

(Testimony of F. S. Le Grow.)

customed to mail deeds from his bank to the county recorder to have recorded and that to the best of his recollection the deeds given to him by Marvel Watts were sent from his bank to the county recorder for record. (Page 336.)

“Q. Did you examine the deeds at that time?

A. No, sir.

Q. Would you know them now?

A. I don't think I would. [186]

Q. Do you know whether that was prior to the death of T. J. Watts?

A. Well, I don't remember; I know it was along about that time.

Q. Have you any recollection of his giving you any further deeds about that time to be recorded?

A. No.

Q. What did you do with these deeds?

A. Why, I had them recorded. I evidently mailed them; that is the way I am accustomed to whenever we have any deeds or instruments to be recorded. We mail them to the county recorder and attach a little check usually for who is to pay the recording charges, and the recorder records them and returns them to us, and cashes the check at his local bank.”

On cross-examination he testified that he did not remember the date when he sent the deeds to the County Recorder and does not remember the date of the death of Watts; that after the death of Watts, Marvel Watts, administrator, paid off the \$3,000 note and mortgage, if he remembers correctly, on

(Testimony of F. S. Le Grow.)

the 13th of November, 1915; that he had talked with Watts at different times regarding his business affairs but does not remember any of the circumstances.

“Q. Now, you say that you mailed two deeds for recording that were handed you by Marvel Watts?

A. Yes, sir, I said that I presumed that I mailed them. I usually do. I am pretty sure that I did these; very seldom that I would take them down.

* * * * *

Q. Upon what day did he hand you the deeds that he did pass to you? A. I don't remember.

Q. Was it before or after the death of Mr. Watts?

A. I couldn't tell you that. I remember it was about that time. [187]

Q. Did you receive them back?

A. I think we did.

Q. After they were recorded? A. Yes, sir.

Q. Did you make a charge in this account for that?

A. Well,—no—we made no charge in that account.

Q. Did you make a charge against the account of Marvel Watts?

A. Well, I could not say. I presume we did; we always do.

Q. Have you got that record with you?

A. No.

Q. Will you produce it?

A. Well, if I can find it I will. It was bulky you know. We might have balanced the account and returned the vouchers to whomever it was charged to and I would not have it.

(Testimony of F. S. Le Grow.)

(Note: It was not offered in evidence and there was no further explanation.)

Q. Well, have you got a copy of the letter transmitting those particular deeds?

A. I don't remember sending any letter. We just enclose that in a bank envelope with a blank check with a notation who is to pay the recording on the check. The recorder fills in the check for the amount of the recording, cashes the check and returns it to us in the usual course of business, and we charge it to the customer, whoever it belongs to."

That he is positive he had the two deeds given to him by Marvel Watts in his possession about the time of the death of T. J. Watts, and that Marvel gave them to him in the bank; that Marvel and other people had often asked him to have instruments recorded. That he received a letter from Mr. Parker responsive to which he forwarded a document to Mr. Watts at St. John, Washington, with which he sent a receipt for T. J. Watts to sign, which was signed, in his own handwriting, dated [188] March 27th (page 348). (Receipt received in evidence.) That he has no personal knowledge of how the will came to be at his bank but that he sent it to Watts on the 25th of March. (Page 349.)

Testimony of Dr. Samuel F. Sharp, for Defendants.

Dr. SAMUEL F. SHARP, resident of Athena, Umatilla County, Oregon, since the spring of 1879, engaged in the practice of medicine at that place ever since that time, graduate of Jefferson Medical Col-

(Testimony of Dr. Samuel F. Sharp.)

lege of Philadelphia, testified that he had been acquainted with Thomas J. Watts ever since about the first year that he (witness) located at Athena; knew him well; treated his family the greater part of the time up to his death; that Watts was frequently about his office; remembers the occasion of Watts return from California in the spring of the year 1914 but did not see him until he returned to Athena from the State of Washington when he saw him at the home of Homer Watts about the 12th of April, at which time Watts was very feeble, weak and exhausted, suffering from a general breakdown and that he did not talk to him very much that day; "that he was so hard of hearing I couldn't talk to him." (Page 354.) Saw him every day thereafter until his death, saw no change in him until the Thursday after he had been out in the automobile after which pneumonia gradually set in and caused his death; that Watts always knew him and recognized him during that time, but that he didn't converse with him; he didn't say very much" (page 355). That he did not notice any difference in his mind from what it had been a year or two before that time, and that he seemed rational "perfectly rational"; that he noticed Watts was perfectly rational up to about Friday"—Thursday or Friday—Friday, [189] I think," before his death, when he became delirious and gradually grew worse; that he was there probably twice on Saturday and twice on Sunday. That Watts told him Homer wanted to take him out automobile riding but that he did

(Testimony of Dr. Samuel F. Sharp.)

not want to go and that he told Watts it was pretty cold for him to go and that he was hardly able to go “and that if he didn’t want to go, I wouldn’t do it (page 356),” and that “it was too cold anyhow,” but he went. That he had heard Watts speak about what he was going to do with his property in the latter part of his life and that he would speak about giving it to the boys except a little he was going to give to his daughter (page 356), heard him speak about it several times during the last years before he went to California. That Watts did not like Homer and wife very well—thought they had not treated him quite right and would often speak to witness about it. (Page 357.) That Watts made his home the latter years of his life when in Athena at Marvel Watts, and that he had treated him at that place. That on Thursday or Friday after Watts had been out automobile riding he commenced to cough, but up until that time “his mental condition was good”; that Mr. Watts never talked to him about the deeds or mentioned them (page 358).

Upon cross-examination he testified that Watts was suffering from a general break down.

“Q. Doctor, you say that he was suffering from general breakdown when you first called on him—old age? A. Yes.

Q. He was a very old man, wasn’t he?

A. Yes, he was past eighty, I think.

Q. And in a feeble and senile condition?

A. Yes, he was feeble—very feeble. [190]

Q. General breakdown?

(Testimony of Dr. Samuel F. Sharp.)

A. General breakdown." (Page 360.) That he did not notice any symptoms of pneumonia when he went to Homer's house to see him; that he never saw him out of bed all the time he was there (page 360); that Watts was very hard of hearing and that he did not talk with him a great deal. "You had to halloo to make him hear" (page 360). That Watts could talk very good but on account of being deaf could not understand others very well; that he gave Watts a heart stimulant and nerve sedative until he developed a cough and thereafter gave him expectorants (page 361); that Dr. McIntyre had left some medicine with Watts, heart stimulants—strychnine in tonic doses—and he continued the same treatment (page 361), giving him also as he remembers it, bromides for sedatives as Watts was very nervous and restless when he first saw him, and that when he first saw Watts "I thought at first that he probably would get up again," and that the purpose of the stimulant was to "brighten him up" and that a stimulant of that kind does brighten one up more or less for a while, but that he did not give it to Watts "very strong"—large doses.

"Q. Was it on Tuesday the 14th that he talked to you about the automobile ride? A. Yes.

Q. And he talked to you in the morning about it and said Homer wanted to take him for an automobile ride but he didn't want to go?

A. Yes, it was too cold.

Q. It was too cold, and you told him you didn't think he was hardly able?

(Testimony of Dr. Samuel F. Sharp.)

A. I didn't think he was hardly able and it was very cold.

Q. You didn't think it was best for him to go?

A. No, I didn't think it was best.

Q. Now, Doctor, when you saw him there at these times he [191] didn't seem able to get up, did he?

A. No, I don't think he did, hardly. I never saw—I don't think he tried to while I was there."

That he did not see Watts out of bed at any time during his sickness; didn't have good use of his arms and legs; that if he remembers correctly Watts was not quite as well the next day after the automobile ride—had taken cold and began to cough and failed rapidly thereafter (364). That Watts was "all right" Tuesday but was not so bright the next day. That Watts talked with him many times about his property, several years before he died and up until before he went to California the last time—would come to his office in the summer before he went to California the last time and often speak about his property (page 365). That he did not see Watts after he went to California until he came back to Athena from Washington; that Watts always spoke well of Jerusha, said she always treated him kindly, never heard him speak unkindly of Jerusha in his life nor complain of her treatment of him, knew he was going up there to visit her pretty often (page 366). That during his last sickness he was nervous and shaky all the time and did not have good use of his right hand but that he thinks Watts could prob-

(Testimony of Dr. Samuel F. Sharp.)

ably have written his name. That he thought when he first saw Watts after his return from Washington he would get up again and did not change his mind about it until the cough developed. That he never heard or knew anything about the deeds until after the old gentleman's death. (Page 366.) [192]

Testimony of Marvel Watts, for Defendants.

MARVEL WATTS, forty-three years old, testified that he was born and raised in Umatilla County; married in 1899; has one child, Vernita, sixteen years old, who has been in poor health several years. That he made his home with his father and mother twenty-five years, worked on the farm when not in school and is now a farmer and manager of the Preston-Schaffer Milling Company since January 1, 1905; that his father went to California in the fall of the year 1913 and that he himself went to California and brought him to Athena the latter part of February, 1914, where he remained until after the middle of March when he took him to Jerusha Crabbs, staying there with him over night; left him there, came home, went back to Jerusha' the 3d day of April, 1914, with his mother, wife and Vernita by automobile, getting there Friday evening, and remaining himself until Monday morning when he came home and then went back again, remained over night, brought his father home with him—brought his father home for several reasons—because he was not satisfied with the treatment he was getting and Dr. McIntyre thought it would be best to take him away

(Testimony of Marvel Watts.)

and that John Crabb told witness and his mother that "it looked like the relatives were dumping all their old people off on him to take care of"; that his mother couldn't stand that remark; that immediately after his father and mother were divorced they became friendly with each other and their relations were very pleasant and that they very frequently visited with each other at his home.

That the two deeds executed by his father conveying the property to Jennie Anderson Watts and Vernita Watts, his wife and daughter, were first seen by him on the 15th [193] day of April, 1914, when Homer gave them to him for a while and he gave them back to Homer, and asked him to have them recorded; that he did not see the deeds any more until Saturday morning following, when Homer gave the deeds back to him, telling him he had forgotten to have them recorded; that he then took the deeds to Mr. Le Grow at the bank that Saturday, in the morning (page 374), and, before his father's death, asked Le Grow to have them recorded, and that his father died the following Monday, 20th of April; that he did not see the deeds any more until a few months thereafter; that on Thursday afternoon after the execution of the deeds he went to Homer's house to see his father and that his father asked him if Homer had given the deeds to him and when he told him Homer had done so his father said he hoped everything was satisfactory and that "Homer promised there would be no trouble over it." That before the execution of the deeds he never talked with his father

(Testimony of Marvel Watts.)

but very little—but once—about his property as he can remember it, and that was the summer before he went to California when his father asked him what he thought of remembering the wife of witness and also spoke about the mother of witness. That when he was at Jerusha's home while his father was there, he saw W. D. Parker there on two occasions; that he had known Parker ever since he was a little boy and that Parker had assisted him in changing his father's clothes one morning when they were getting him ready to bring him back to Athena, at which time his father smelled "very bad"; that he had had telephone conversations with Dr. McIntyre on the 7th of April and also on the 9th of April between Athena and St. John. That he does not recall his father saying to him in the presence of [194] Mrs. Crabb or Mrs. Wheeler or any other person, "Marvel, if you want to take me back to sign any papers I will not go," or any words to that effect, and that he did not say in his presence, "I have burned the will and want all to share equally," or any words to that effect"; and that his father did not say in his presence at any time or at any place, "On my word of honor, there will be no papers about any property when I go back," or any words to that effect, and that he did not see his father take hold of the hand of John Crabb and hear him discuss with Crabb or say anything to Crabb or any other person about signing any papers or disposing of any property or any words to that effect (page 379); that he did not at the depot at St. John, or at any other place or time

(Testimony of Marvel Watts.)

say to Jerusha Crabb, "Jerusha, don't worry. The property will be divided equally," or any words to that effect, and had no conversation with her at all about the disposition of his father's property until after the death of the father; but after the death of the father when Jerusha was at Athena, she said to him, "I suppose you will be appointed administrator," and I said, "I don't know." (Page 380.) "If you are, wind it up as quick as possible," and that she further said she did not want it dragging along like her uncle's estate; that he never did have conversation with Jerusha Crabb at any place in which he said to her that his father was not satisfied with his will and for her to get the will and destroy it or that Homer had not been good to his father or any words to that effect. That he took his father up to Jerusha's in 1914 because she had written for him to come and he wanted to go; that when he took his father up to Jerusha's the condition of his mind was "just the same [195] as it always was," and while on their way up there his father showed him where he used to run sheep and that he noticed no difference in the mental condition of his father; that when he went up to Jerusha's on the 3d of April, 1914, with his wife, mother and daughter, his father was on the couch asleep but woke up and was stupid and that when they all spoke to him his father said, "Where is Homer"; that his father sat at the table that evening and ate his dinner but did not talk very much but recognized him, his wife, mother and daughter; that about midnight that night *Mr. McIn-*

(Testimony of Marvel Watts.)

tyre was called and also Dr. Mitchell of Colfax came about eight o'clock in the morning.

“Well, they gave him some chloroform and drew his water, and daddy got easy right away and went to sleep. About that time Bill Parker came up there and I got in the car and went down to St. Johns, and I came back to Bill’s and visited with Bill nearly all day. I then went back up to St. Johns in the evening.

Q. Well, now, go ahead and tell what, if any, conversations you had with your father there, and state any other facts that led you to believe or know the condition of his mind.

A. Well, that day you see I was not there much. In fact I never talked to Daddy a great deal while we were up there, because he was in a whole lot of pain that day, and Saturday, yes, Saturday and Sunday—Daddy told me when they had used that catheter they had hurt him and it hurt him very much to urinate. He thought it would be all right in a day or two.” That when he went back to bring his father home “mentally I didn’t see anything the matter with him at all. His physical condition, of course, was not very good.” (Page 384.)

Q. Did you ever have any talk with Jerusha about a will on [196] either of these trips?

A. The first time was all. Well, when we went up there the second time, Jerusha told me that he had burned his will that morning about the way she related it here on the stand.”

That he never did talk with his father at any time

(Testimony of Marvel Watts.)

with any intention or effort to influence him to dispose of his property in any manner, and that there is absolutely no understanding between him and Homer regarding a division of the property; that his father looked after his own business the last few years of his life except that he would sometimes have witness and Fay Le Grow to do a few things. (Page 385.) That he and Homer had been farming their father's land the last few years under a lease from their father, paying him one-third rental; that he and Homer were running the land and a lot of lands he had on the reservation together (page 385); that his father did his own banking business; that at one time his father had \$3,000 borrowed from Stella Anderson, sister-in-law of witness, and paid to witness \$2,000 thereof to be applied on the debt. That he never did have any talk with Homer Watts in regard to procuring the execution of the deeds or any one of them and that there is no understanding whatever between himself and Homer about a division or sharing in the property described in the deeds—absolutely none. It was agreed that the rents and profits up to date should stand as set forth in defendant's answer. (Page 396.)

Upon cross-examination he testified that he was the manager of and the owner of a part interest in the mill at Athena—owned eighty shares; that he and Homer farm several hundred acres of land in partnership and that he himself owns several hundred acres of land in his own right—that [197] there were one thousand shares of the milling company at

(Testimony of Marvel Watts.)

the time of his father's death; that the capital stock was \$100,000, and that there was a large surplus; that at the time of his father's death he and his brother were farming 240 acres and 160 acres on the Reservation—his place of 200 acres making 600; Homer's place of 130 making 730, and 160 of his father's and the 160 they purchased from his mother in partnership; that at the time he owned individually 240 and 40 acres of land worth about \$20,000; that the land they had in partnership they gave \$11,000 for; that he owned ten shares in the bank; that at the time of his death the wife owned the home in Athena and the house and lot in Walla Walla and twenty shares of the mill stock.

Q. She had just a few years before that inherited from her sister a large amount of life insurance, hadn't she?

A. No, there was my wife and three brothers, and there was \$20,000 of life insurance. My wife gave them \$3,000 a piece and paid all the expenses.

Q. She got the balance?

A. She got the balance.

Q. So that she got out of the life insurance about \$11,000? A. No, about \$3,500.

Q. Did you say there was \$80,000 life insurance?

A. There was \$20,000 and she divided twelve; that is four thousand a piece—I think \$12,000 she gave the boys.

Q. Well, now if you are right about that and it was \$12,000 she gave the boys, that would still leave her \$8,000 wouldn't it?

(Testimony of Marvel Watts.)

A. Yes, if there was no expense.

Q. Even at that figure? A. Yes.

Q. Now in addition to that did she inherit his mill stock? A. Yes, sir.

Q. And did she inherit this house and lot in Walla Walla? [198] A. She did.

Q. Now, she had practically all of that at the time he died, didn't she? A. Yes, sir."

That Vernita Watts is his only child. That before he went to California for his father he received a telegram from Tom Page and perhaps also a letter from Jerusha Crabb; was gone about a week or a little over on the trip after his father the latter part of February or the first part of March; that he took his father up to Jerusha's about the 16th or 17th of March at his father's own request and stayed there himself over night, slept in the room with his father, came home, went back, again the third of April with his wife, mother and daughter by automobile, came back home on the 6th, stayed longer than he intended on account of rain, went back again the 10th or 11th and brought his father home.

(The Court at about this juncture of the cross-examination of the witness appointed Miss M. A. Fleming Special examiner to take the balance of the testimony in the case, whereupon she was duly sworn as special examiner to take and report the balance of the testimony.)

Q. Now, when you got back to Athena did you tell your brother Homer that you had learned the will had been destroyed?

(Testimony of Marvel Watts.)

A. I don't remember; I possibly might.

Q. You and he talked about your going back up there and bringing your father down, didn't you?

A. Yes, sir; that was about, I think the day before I went after him.

Q. And had you made arrangements for a nurse, you and him? A. No, sir.

Q. And a doctor? A. No, sir." [199]

Then upon further cross-examination Marvel testified that his wife and his mother were present at Crabbs when Jerusha told him about the will having been burned the same day they got there. That there were several neighbors living in the vicinity of his house and Homer's house in Athena. (Page 408.)

"Q. That there were six other houses in the same block with Homer's. One within from one hundred to one hundred and fifty feet; that it was a small town and everybody neighbors." (Pages 407-8.)

That when he was at Jerusha's on the 3d of April his father came to the table in the evening, had a pretty severe pain in his leg but that he himself did not suggest bringing his father to the table; that his father did not eat very much, sat at the table possibly five or ten minutes. Don't remember how he got to the table; some of the folks helped him to eat. He sat there five or ten minutes and then some one helped him to bed. (Pages 410-12.) That his mother and wife were present when John Crabb made the remark about "dumping relatives" (page 413.) That John Crabb did not object to his taking his

(Testimony of Marvel Watts.)

father away but Mrs. Crabb said she didn't think he was able to be taken away, but did not object to his being taken away when he told her the doctor said it was all right; that at first his father said he wasn't able to go and that witness told him he was, and he asked witness what the doctor said about it.

Q. Now, you insisted then on taking him away, did you? A. Why, I went after him, yes.

Q. What say? A. I went up after him.

Q. Well, I say you insisted on taking him away?

A. Well, I did take him away. [200]

Q. And in nine days afterwards he was dead?

A. Yes, about that." (Pages 414-15).

That his father died in about nine days after he took him away; don't remember saying to Parker the morning he took him away that they did not want him to take him but that he was going to take him. If he did he does not recall it. (Page 415.) That it is seven or eight miles from Jerusha's home to St. John and from St. John to Athena probably one hundred thirty or one hundred forty miles; that they left John Crabb's house about ten o'clock in the morning and got to Athena about four in the afternoon, coming on the train and that he and Dr. McIntyre rode in the baggage-car with his father; that Jerusha came with them to the train but that he had no private talk with her; no talk with her about property; don't recall any talk about property. (Page 421.) That from the depot at Athena to Homer's house is probably four or five blocks and that when they got to Athena his father was taken to

(Testimony of Marvel Watts.)

Homer's house in a dray; that he thinks they carried him to the dray and from the dray to the house; that Homer helped. (Page 422.) That the property his wife inherited from her sister was from the Preston estate, as she had been married to Dale Preston who died several years after they were married and that Mrs. Preston died about three months after her husband died. That in 1913 there was no other mortgage on his father's property except the \$3,000 and had not been for several years and that his father knew in 1913 that the \$3,000 mortgage had not been paid off.

Witness having explained that there had not been any other mortgage except the \$3,000 for a good many years before 1913, was asked: [201]

“Q. So it is perfectly plain from this letter that in 1913 your father thought that mortgage was about all paid off, ain't it?”

A. No, sir, he knew it was not paid off, that \$3,000 mortgage.

Q. Well, then he must have been crazy, mustn't he?

A. Well, Judge, I believe I can explain that two thousand dollars, my own ideas.

Q. All right, if you think you can, explain it now. You couldn't when Mr. Raley was asking you about it, but if you can now go ahead.

A. I believe I can, but I don't know. It was started yesterday and was stopped, but this fellow Skelton bled Daddy to a finish. Not only that but he put up a badger game on father and wanted ten

(Testimony of Marvel Watts.)

thousand dollars out of father. They finally compromised the thing for twenty-five hundred dollars and father came with this fellow down to Walla Walla to get the money; didn't want to pay it in Athena because he didn't want us boys to know. That was before he and mother were separated. Mr. Burford asked father what he wanted with the money. He 'fessed' up then what he wanted with it. Mr. Burford sent right over and got Mr. Sharpstein an attorney, and Mr. Sharpstein told this fellow here that he would have him behind the bars in fifteen minutes. So Daddy finally insisted that they give the man two hundred and fifty dollars and pay him for his trouble, and they did. Mr. Burford told Mr. Le Grow and Mr. Le Grow told me. Then father told me before this happened that this fellow was treating him. Father came down from Spokane, and as I remember it, this fellow Skelton wanted eight hundred [202] dollars to cure him. Father took some money and went back up to Spokane. I don't know how much he did spend that winter—probably a thousand dollars; but a little after that a letter came to Athena to my father. Father wasn't there—I don't know where he was but I remember this incident, so curious like I opened the letter. It was from Emma, and Emma says, 'We want you to send us three hundred dollars; you remember that I only got two hundred and fifty dollars out of that other affair and you (father) promised me twenty-five hundred dollars. And my father was an honest man. Now, I actually believe that father gave this

(Testimony of Marvel Watts.)

fellow money after that and I think that is what he refers to in that two thousand dollars there. I think it was my father's full intention to pay that twenty-five hundred dollars as he promised that fellow.

"Here counsel for plaintiff moved to strike out all of this answer of the witness as being voluntary, not responsive to the question and immaterial and incompetent, and based upon hearsay.

"Objected to by counsel for defendants upon the ground that counsel for the plaintiff asked for it. That the explanation was called for by counsel and the witness was asked to make any explanation that he could.

Plaintiff's Exhibit 9 read as follows:

Plaintiff's Exhibit No. 9.

Athena, June 16, 6 mo., 1913.

Dear Daughter and Family:

I got your letter the other day well it is wet and cold down here crops never looked better farmers is in sperits over the prospect of a good crop Marville have in fall wheat a bought 500 acres 120 of that is on my place and 187 acres on my [203] place is summer folowed I payed off \$2000 last fall just before I went to California and I owe \$1000 this is the last of my debts which accurd whilst the boys was sick before they died. well I have been lame with rhumates in my feet and rite rist this spring but am geting better now think will come up some time this summer do not know at what time I got a letter from a man by the name of Tabor says

(Testimony of Marvel Watts.)

he is my nep he has bin a round spocan for 10 years but has just herd where I was so I want to see him this summer when I come up to that country my eyes is yet some sore.

T. I. WATTS
JERUSHA.

That his father told him he paid Skelton \$250; that his father never told him that he ever paid any other money than the \$250 on that account.

“Q. Now, do you claim that there was ever a mortgage to secure any money that was paid in relation to the Skelton matter?”

A. No, sir, I don't claim there ever was a mortgage for that.

Q. Now, in this letter of your father's it says, 'I paid off two thousand dollars last fall just before I went to California and I owe a thousand dollars. This is the last of my debt which accrued whilst the boys were sick before they died.' Now, when was it the boys were sick and died?”

A. As I remember it one died in 1898 and the other in 1899 or 1900.”

That along about that time there was a great deal of sickness in the family. That he does not know whether his father continued to go back to Shelton's every year after he paid the \$250 or whether he went back at any time [204] after that but does remember his father was at Kennewick as he thinks he sent him some money to Kennewick but did not know he was taking electric treatments at Kennewick nor that Skelton was giving them; that his

(Testimony of Marvel Watts.)

father had the trouble with the Skeltons before his father and mother were separated as he remembers it; that he got one letter from his father written at Santa Ana, California, dated January 24, 1914, and another dated December 31, 1913 (page 444), got other letters from his father nearly every week but cannot find them as it is not his habit to keep friendly letters. That he couldn't find the telegram on which he went to California for his father but he found the date which was February 28th (page 443); that after his father and mother separated his father spent two winters in California and may have spent three and may have spent four—that he does not know; and he spent about a month one winter in the Willamette Valley but he cannot say what year." (See page 449).

Having testified that in 1912 or 1913 when his father was taking treatment at Kennewick that his father told him that he was taking treatments from a fellow that had an electric machine, he was asked:

"Q. Well, did you ask him if it was the same fellow he had had the trouble with at Spokane?"

A. I don't think so; I didn't know it or I wouldn't have let him go back." (Page 452.)

Q. Well, now if your father had thought anyone worked a badger game on him he wouldn't have gone right back to the same place, would he?

A. Well, I don't know what my father thought.

[205]

Q. Well, now if he thought that man had put up a badger game on him he would not have kept going

(Testimony of Marvel Watts.)

right back there year by year would he—twice a year?

A. Well, I don't know whether he would or not. I don't know that he did.

Q. You cannot remember whether he did or not?

A. No, sir.

Q. You would have thought it very strange if he had, wouldn't you?

A. Well, evidently I would, yes.

Q. You would have thought it kind of crazy, wouldn't you, to do a thing like that?

A. No, it might not have been crazy. I probably wouldn't understand it." (Pages 453-4.)

In the year 1911, 1912 and 1913 under arrangements with his father the crops were divided at the warehouse and that his father generally came to the mill to settle and when the wheat was sold his father's part of the money was generally paid to his father and that possibly his father's share of the rent in 1912 was around \$1,000 and for the year 1913 about \$1,000. That he first knew about the deeds on the 15th of April and that he gave the deeds to Mr. Le Grow to have recorded. That he remembers seeing Judge Fee something like two or three months after his father died in the office of the witness at Athena and having a conversation with him. That he got the letter from 'Emma' right after the trouble in 1904 or 1905.

"Q. Now, then, in that conversation did you say to Judge Fee that you didn't know anything about these deeds in question until after your father's

(Testimony of Marvel Watts.)

death or words to that effect?

A. No, I don't recall that at all.

Q. Well, what do you say as to whether you said it or not. A. I don't think I said it. [206]

Q. Well, do you know whether you did or not?

A. Why, yes, I wouldn't say that because it wasn't true.

Q. You say that you know you did not say that to Judge Fee?

A. Yes, I am quite sure I did not. I don't know why I should say it." (Pages 463-4.)

The two letters—one dated Santa Ana, January 24, 1914, consisting of four sheets of paper signed by T. J. Watts, marked Defendants' Exhibit "K," together with the envelope addressed M. L. Watts, Athena, Oregon, marked Defendants' Exhibit "L"; and the letter dated December 31, 1913, together with the envelope marked Defendants' Exhibit "M" and Defendants' Exhibit "N," were introduced in evidence without objection. That after his father died he was appointed administrator of the estate and that Homer was his attorney; that the eighty acres of land sold for something like \$4,000 or \$4,100. That the debts including the mortgage at the time his father died amounted to \$3,200 or \$3,300; that the balance was eaten up by funeral expenses and the expenses of administration, including his own and his brother's fees, so that there was nothing left to distribute. (Page 470.)

**Testimony of Homer I. Watts, for Plaintiff
(Recalled—Cross-examination.)**

HOMER I. WATTS, recalled for further cross-examination by the plaintiff, testified that after the death of his father he wrote a letter to Jerusha Crabb regarding eighty acres of land belonging to the estate.

Testimony of Samuel Hut, for Defendants.

SAMUEL HUT testified that he had been residing in Athena continuously for fifteen years; is married; fifty-nine years old; a drayman for twelve or thirteen years; lives [207] four or five blocks from Homer Watts; got acquainted with Thomas J. Watts, he thinks, in 1902, and that while Thomas J. Watts would be in Athena he would see him once or twice a week—sometimes maybe oftener—and knew him as well as he knew other old people around Athena; did dray work for him and remembers the occasion of Mr. Watts coming from Washington and being taken off the train at Athena, and also remembers seeing him on Main street in Athena in an automobile in front of Hawks' drugstore and had a talk with him, passed a few words (page 475); that Watts spoke to him as he always did; that at that time he also saw Byron Hawks, the druggist and Jack Vincent, a jeweler, about the same time; that Mr. Watts was sitting up in the automobile and that witness drove up close to him, leaned over to him and said, "How do you feel, Uncle Tommy?" and that Mr. Watts answered him as follows: "I feel fairly well.

(Testimony of Samuel Hut.)

I feel good. How do you feel, my boy?" That Mr. Watts always called him his boy; that Mr. Watts also asked him how his family was; that he never saw Mr. Watts alive after that day, but heard Byron Hawks talking to him about the same way that witness talked to him; that about the same time he saw Sam Booher and heard Booher ask Watts how he was getting along. That he did not notice any difference in the mental condition of Mr. Watts at that time than he had noted any other time, as Mr. Watts spoke to him as he always did and that there was nothing at all about his actions or his conduct or his language that indicated he was not perfectly intelligent and in good mental condition. "He appeared just the same that day as he ever did to me." That witness is not related to any of the parties. [208]

On cross-examination he testified that he first met Mr. Watts at a blacksmith shop in the year 1902 at Athena; that he helped Homer Watts bring Mr. Watts from the home of Mr. Watts to the home of Homer Watts about twelve years ago when Mr. Watts was crippled and had to be waited on; that he had also seen him at Marvel's house at different times; that he had not seen him for some time prior to the day he saw him in front of the drugstore; that he looked thin, but had always looked thin to him, and that Mr. Watts spoke to him and answered him that day just as he had always done; that he does dray work for the milling company and has done it ever since he has been in the business (page 485), and

(Testimony of Samuel Hut.)

for the Watts boys, but on redirect examination the witness testified this fact does not make any difference whatever in his testimony.

Testimony of B. B. Richards, for Defendants.

B. B. RICHARDS, forty-four years old, justice of the peace and city recorder at Athena since 1907, member of the Board of School Directors, formerly cashier of the First National Bank of Athena, testified that he became acquainted with Thomas J. Watts in the summer of 1899 and for several years, when Watts was in Athena, saw him almost daily; that he lives on the same street and in the same block that M. L. Watts lives on and in, their homes adjoining, and that Homer Watts lives about a block and a half away; that in the fall of the year 1899 he drew a will for Thomas J. Watts in Athena which was signed by him and witnessed by, he thinks, Bill McBride and himself; that he has written wills for other persons and [209] that the will for Watts was executed in the general way that wills are executed before him in the presence of two witnesses—as he remembers it; that when the will was executed, Mr. Watts took it, that witness has never seen it since and does not know what became of it; that in the will Mr. Watts gave to his wife a place in Athena or near Athena, a quarter-section of land, and gave to Jerusha Crabb a small sum of money, he thinks something like \$100, and gave the remainder of the property to be divided equally between his three boys. At that time Mr. Watts had three boys living.

(Testimony of B. B. Richards.)

Thereafter in the year 1910 or 1911 he drew another will for T. J. Watts at Athena, which was signed by Watts and witnessed by Dr. G. S. Newsom and himself; that Mr. Watts asked him and Dr. Newsom to subscribe their names as witnesses to the will, which they did; that at that time Mr. Watts and his wife had been divorced; that when the will was executed T. J. Watts carried it away and witness never saw it thereafter and does not know what became of it; has no copy of it, but remembers that he gave to Jerusha Crabb a small sum of money—the exact amount he does not remember, but that it was less than \$500 and that the remainder of the property was given to Marvel Watts and Homer Watts, share and share alike, and at that time the mental condition of T. J. Watts was all right; that neither Homer Watts nor Marvel Watts was present at the execution of the will, and he did not have any conversation with any one of them about the execution of the will; that Mr. Watts was always positive and certain and his ideas were well defined and witness considered him perfectly competent. (Page 495.)

On cross-examination he testified he had maintained a [210] permanent residence at Athena since 1906, but went there the first time in 1899, taught school in that vicinity, then resided at Helix four or five years; has been living in the same block with Marvel Watts about seven years; that on one occasion Mr. Watts fell, and as he remembers it, dislocated one hip and was taken care of by Homer at Homer's house; that he knows positively Watts

(Testimony of B. B. Richards.)

left less than \$500 to Jerusha in the last will he wrote for him; that he observed no difference in the mental capacity of T. J. Watts between the making of the first will and the time of making the second will. That he does not remember seeing Mr. Watts in the year 1914; that Mr. Watts could hear fairly well if he knew who was talking to him and looking straight at him.

Testimony of Dr. G. S. Newsom, for Defendants.

Dr. G. S. NEWSOM, a practicing physician since 1904, graduate of the University of Oregon, licensed to practice medicine and surgery in Oregon, testified that he was thirty-five years old; was acquainted with Thomas J. Watts in his lifetime; first met him at Prineville when witness was "just a young fellow"; that he moved to Athena in the year 1910 and was engaged in the practice of medicine and surgery and saw Mr. T. J. Watts as frequently as he would see other men in a small town and was present at the execution of a will by him in the office of B. B. Richards in the fall of the year 1910, as he remembers it; saw Watts sign the will, and that B. B. Richards and he subscribed their names thereto as witnesses; that witness himself read the will before he subscribed his name to it, but has not seen the will since that time; that he remembers the terms of the will—\$200, as he remembers—was left to the [211] daughter and the remainder of the property was left to Homer and Marvel; that witness went away from Athena about the first day of May, 1913, and never

(Testimony of Dr. G. S. Newsom.)

saw Mr. Watts, as he remembers it, thereafter; that that at the time Mr. Watts executed the will in his presence his mental condition was as good as any other average man's (page 509), and that his mental condition thereafter when he would see him was apparently the same as it was at the time of the execution of the will—noticed no difference in him mentally; had several conversations with him around the hotel and other places in Athena and considered him at all times able to handle his own affairs; that at the time of the execution of the will to which he was a witness he did not see either Homer Watts or Marvel Watts and knows of no person influencing Watts (page 510.)

Upon cross-examination he testified that he was not present when the will was written but read it over before he signed it as a witness for the reason he never signs anything until he reads it over; that he got acquainted with Mr. Watts seventeen or eighteen years ago and did not see him after the month of May, 1913, as he himself moved away from Athena for a time then; that Mr. Watts was hard of hearing, had rheumatism, was getting childish, as old men do (page 513); was acquainted with the father of witness and would frequently ask about his said father. "We would always get a conversation out of Uncle Tommy and a little amusement by just starting him on the Blue Bucket Mines; I have heard him tell about them at least a dozen times, tell practically the same story every time." (Page 514.) [212]

**Testimony of Jennie Anderson Watts, in Her Own
Behalf.**

JENNIE ANDERSON WATTS, one of the defendants, wife of Marvel Watts, testified that she had been married to Marvel Watts eighteen years; has one child named Vernita; had known T. J. Watts ever since 1899, and that he made his home with her and her husband the last six years of his life and was there on an average eight months out of each year; that late in life he had rheumatism and his feet and hands bothered him; that she frequently had to wash the back of his neck as he couldn't do that himself; that her daughter, Vernita, used to lace up his shoes as he could not do that very well on account of his fingers bothering him and that he thought a great deal of Vernita; that she heard him speak one time about changing his will and having left Jerusha \$10 and that she herself told him he should have left Jerusha more than \$10 and that he then told her he left her only \$10 because one of his brothers took care of her when she was a child and had made her an heir; that his own boys had made most of his property and he didn't think it right for Jerusha to come in and take it from the boys after they made it. (Page 522.)

On cross-examination she testified that she thought Mr. Watts made his home with her and her husband on an average about eight months each year but she couldn't say how much of each year he stayed there; that he would go away and be gone sometimes three

(Testimony of Jennie Anderson Watts.)

weeks, a month, three months and four months but was at their home a part of the time every year and that she had known him to stay at Homer's; that her daughter Vernita has a very weak spine and had had sickness. [213]

“Q. Will you say that he was at your house and stopped at your house the year 1913, at any time after the month of September?

A. Well, I know he was at our house part of the time of every year from—

Q. That is not the question I am asking, Mrs. Watts. I want to know if you will say that he was at your house at any time during the year 1913 from the first of September on, to stay?

A. Well, I am sure that he was.

Q. You are sure that he was? A. Yes.

Q. Will you swear that he was there from the first of October any time in the year 1913?

A. I never thought of having to give certain dates, or I would have kept a diary of all this. I cannot tell you.

Q. You cannot tell? A. I cannot tell you.

Q. Will you swear that he was at your house in the month of May, 1913?

A. Well, I couldn't swear.

Q. Or June, 1913?

A. I couldn't swear what months.

Q. You wouldn't swear? A. No.

Q. Will you swear that there was not three months in the early part of 1913 that he was not there at all? A. No, I wouldn't swear that.

(Testimony of Jennie Anderson Watts.)

Q. Now, then, how long was he absent in California the last time? A. The last time?

Q. Yes.

A. He must have been down there the last time three or four months.

Q. Three or four months?

A. If I remember right.

Q. Well, now, didn't he go down there in the month of December?

A. Yes, the last of December. [214]

Q. Yes. Where was he stopping immediately before the time that he went down there?

A. Why, he was at our house.

Q. For how long?

A. Well, he had been there quite awhile, if I remember.

Q. How long?

A. How long had he been at our house?

Q. Yes.

A. Let's see. That was, you say, 1913?

Q. Yes.

A. Really I don't know just how long.

Q. Wasn't it a very short time?

A. It might have been. I don't remember of his being away just before going to California. He might have been.

Q. Hadn't he been over at Kennewick, Washington? A. Yes, he has been at Kennewick.

Q. During the month of October and November, and part of the month of December?

(Testimony of Jennie Anderson Watts.)

A. I don't remember of his being at Kennewick over a month or so.

Q. Over a month or so?

A. I think he was there twice, a month or so. He was taking treatments of an electric doctor, he told us.

Testimony of Will M. Peterson, for Defendants.

WILL M. PETERSON, of Pendleton, Oregon, testified that he is an attorney at law; came to Umatilla County about the first of March, 1902; went to Athena in the month of May, 1902, and remained until in 1907; was practicing law there; was acquainted with Thomas J. Watts; wrote a will for him on the 25th day of November, 1905, which was executed by him in the presence of the witness and one other witness and that the will was duly executed and carried away by Mr. Watts; that in the will Mr. Watts bequeathed to Jerusha Crabb the sum of \$10, and left the rest of his property to his wife and two sons, Homer I. Watts and Marvel Watts. [215]

On cross-examination he testified that he kept a record of fees charged and that refreshing his memory from his record he wrote the will for Mr. Watts on the 25th day of November, 1905; that Mr. Watts either told him at that time or at some other time that his brother had raised his daughter Jerusha, and that the brother would make or had made some provision for her; that Mr. Watts had been in his office a large number of times. That at the time

(Testimony of Will M. Peterson.)

the will was drawn, Watts was living with plaintiff's stepmother and Marvel was living there in the same town, and Homer was east in school. (Page 532.)

Testimony of Mrs. Jane Carden, for Plaintiff.

Mrs. JANE CARDEN testified that she had been living in Athena about six years, had done some nursing, took care of Thomas J. Watts at the home of Homer I. Watts, beginning the 12th day of April, 1914, and continuing until his death which she thinks was the 20th of April; that his right arm during that time was perfectly useless but that he could use his left arm some; that she remembers the day he went out automobile riding on Tuesday—went between nine and ten and came back after dinner, and that he was “rational up to that time,” and would know people when they came in, answered questions and asked questions in an intelligent manner, seemed to understand all that was going on around him.

On cross-examination she testified that Homer Watts made arrangements Saturday evening for her to come to his home and nurse his father and that she went there on Sunday morning about seven o'clock; that she slept in the same room and was with him all the time (page 538). That Mr. Watts was hard of hearing, almost deaf, and that one had to talk very loud to him to make him hear. [216]

Q. Now, when you got there where was he?

A. In bed.

Q. He was very old and very feeble, wasn't he?

A. Yes, sir, he was.

(Testimony of Mrs. Jane Carden.)

Q. And childish, was he? A. Yes, sir.

Q. Now, in taking care of him I suppose you changed the bed and gave him a sponge bath every day? A. Yes, sir, I did.

Q. You couldn't very well give him any other kind of a bath but a sponge bath, could you?

A. Sponge bath and alcohol bath.

Q. Yes. Well, you did, you gave it to him in bed?

A. Yes.

Q. He was not in a condition so you could take him up and put him in a bath tub?

A. No, you couldn't put him in a bath tub.

Q. Every day you gave him a sponge bath?

A. Yes.

Q. Now, with the exception of the time when he went out automobile riding was he out of bed at any time while you were there until he died?

A. No, sir.

Q. Never was? A. No, he was not out.

Q. He never came to the table at any time? He wasn't able to? A. No, not while I was there.

Q. Not while you were there? A. No.

Q. Not from Sunday morning until he died?

A. No.

Q. And on this day when he went out automobile riding, did they take him out of bed? A. Yes, sir.

Q. And who took him out of bed?

A. Homer Watts and I.

Q. Homer Watts and you?

A. I helped to put his clothes on.

Q. You helped to put his clothes on?

(Testimony of Mrs. Jane Carden.)

A. Yes, sir.

Q. Was there anyone else there besides you and Homer?

A. Guy Jonas was there and Mrs. Watts. [217]

Q. Guy Jonas and Mrs. Watts? A. Yes.

Q. Did Guy Jonas help to get him out of bed and dress him? A. He helped put him in the car.

Q. Well, did he help get him out of bed and dress him? A. I believe he did, yes.

Q. And he helped to take him out and put him in the car, did he? A. Yes, sir.

Q. And how long was he gone?

A. Well, I suppose he was gone over an hour; perhaps two hours—an hour and a half; something like that—I don't just remember.

Q. You told Mr. Hanna that it was about an hour or an hour and a half, didn't you?

A. Well, it might have been. It has been quite a while ago. I have forgotten nearly everything.

Q. That was when it was very fresh in your memory, when you were talking to Mr. Hanna, not very long after it happened, wasn't it? A. Yes.

Q. Now, you don't mean to say in relation to his mind—it was not like the mind of a young man, was it? It was like the mind of an old, feeble man?

A. Well, I suppose it was.

Q. You thought like you would expect in a man who was 82 or 83 years old, and very sick, wasn't it?

A. Well, he was very sick towards the last. He wasn't so awfully bad when I first went there.

Q. Well, I say his mind was about like you would

(Testimony of Mrs. Jane Carden.)

expect of such an old, sick person in his condition, wasn't it? A. The day I went there?

Q. Yes, and from that time on. [218]

A. Well, the day I went there he wasn't—he was pretty bright the first day I went there, on Sunday.

Q. Just about as bright as you would expect an old man in his condition to be?

A. Well, yes, he was pretty bright.

Q. What say?

A. He was a pretty bright old man; yes.

Q. Just about as bright as any old sick man would be expected to be? A. Yes.

Q. But he was very childish, wasn't he?

A. Well, I didn't talk with him very much, so I don't know anything about him being very childish.

Q. You could not tell very much about what was the condition of his mind really?

A. No, I never talked much with him.

Q. And you never had known him before?

A. I never knew him before till I went there.

Q. So that you really couldn't tell what the condition of his mind really was? A. No.

Q. Except that he could answer your questions?

A. He could answer my questions and ask me for what he wanted.

Q. Asked you for what he wanted?

A. Yes, that is all.

Q. You wouldn't undertake to say whether he was in condition to transact important business or anything of that kind? A. No, I couldn't.

Q. Now, on this time when they took him out in

(Testimony of Mrs. Jane Carden.)

the morning or forenoon of the 14th, that was, wasn't it—the 14th of April? A. Yes.

Q. Now, who was there when they brought him back?

A. Well, I was there and Mrs. Watts was there, and Winship, I think he was there. My little girl was there.

Q. Well, didn't Guy Jonas come there and help bring him in?

A. Well, I don't know who helped bring him in. I have forgotten. [219]

Q. Well, didn't you tell Mr. Hanna when this was fresh in your mind that Guy Jonas was there and helped bring him in?

A. Well, I don't remember whether Guy Jonas was there and helped—he was there when I came back, but I don't remember whether he helped bring him in or not. I don't just remember any more.

Q. He was there when you came back?

A. He was there when I came back from the ride.

Q. When you came back from the ride?

A. Yes.

Q. You don't remember whether he was there and helped bring him in or not?

A. I don't remember any more.

Q. But if you told Mr. Hanna that when it was fresh in your memory, that would be likely to be right, wouldn't it?

A. Why, I couldn't tell you that.

Q. You don't know whether Guy Jonas was there at that time or not? A. I don't remember.

(Testimony of Mrs. Jane Carden.)

Q. Was Mr. Crabb present when you talked with Mr. Hanna? A. I think he was.

Q. And then afterwards I came up there one day and you talked with me, didn't you?

A. I think you did sometime a long time after that.

Q. Yes, quite a while after that. And Mr. Crabb was with me, wasn't he, when we talked together?

A. Yes, I guess he was.

Q. Now, didn't you tell Mr. Hanna at the time that you talked with him, that when they returned (referring to Homer Watts and his father) Jonas was there and helped carry the old man into the house; he did not come in the auto; no one came but the old man and Homer? Now, didn't you tell Judge Hanna that in the presence of Mr. Crabb?

A. Well, I might have, but I don't remember it.
[220]

Q. Now, didn't you tell me when I talked with you also in the presence of Mr. Crabb—didn't you tell me that day Homer came with the car; pretty soon Mr. Jonas came and they got the old man in the car and took him for a ride; they were gone about an hour; Mr. Jonas was there and helped him out. Didn't you tell me that in the presence of Mr. Crabb, too?

A. Well, I don't remember. I couldn't remember who helped him out of the car.

Q. You cannot recollect what you told us. Now, then, didn't you tell Mr. Hanna at the same time that you talked with him at the time I have interrogated you, when Mr. Crabb was present that is the

(Testimony of Mrs. Jane Carden.)

only conversation you ever had with Mr. Hanna, isn't it? A. That is all.

Q. That was at your house, wasn't it?

A. Yes.

Q. Now, didn't you tell Judge Hanna in the same presence, that "After they got back on Tuesday I put the old man to bed; in the afternoon Homer's wife took me out for a ride; she asked me to go; when we left the house Homer was there." Did you tell Judge Hanna that?

A. Homer was there, yes.

Q. Was that true?

A. When we went out for the ride, yes.

Q. And that she asked you to go?

A. Yes, she wanted me to go for a ride.

Q. What say?

A. She wanted me to go for a ride, yes.

Q. You also told Judge Hanna that she never asked you to go riding on any other day while you were there, didn't you?

A. Well, she never did on any other day.

Q. Well, I say you told Judge Hanna that she never asked you to go riding on any other day?

A. Yes, I did. [221]

Q. Now, in relation to that same matter, when you talked with me, didn't you say, after saying that Mr. Jonas was there and helped him out—didn't you say, "Before they got back Mrs. Watts asked me if I did not want to go for a ride when they got back, and I said I did not care, and when they came back we went for a ride, leaving Homer Watts, Jonas and

(Testimony of Mrs. Jane Carden.)

the old man there alone." Now, did you tell me that when Mr. Crabb was present?

A. Yes. How is that?

Q. Did you tell me that, I say?

A. About Mr. Homer Watts being there at the house with the old gentleman?

Q. Did you tell me that before they got back (referring to Homer and the old gentleman, Mr. Watts—old Mr. Watts), "Before they got back, Mrs. Watts asked me if I did not want to go for a ride? Now, did you tell me that?

A. Before they got back?

Q. Yes, before they got back.

A. I don't remember saying that. I said we went for a ride.

Q. Well, didn't you tell me that, before they got back, Mrs. Watts asked you if you didn't want to go for a ride?

A. Well, she asked me to go for a ride, but I don't remember just when she asked me that. We went out after they came back.

Q. You don't remember whether it was before or after? A. No.

Q. And you said you didn't care, did you?

A. Well, I said I didn't care.

Q. And when they came back you did go for a ride? A. Yes, we went for a ride.

Q. Yes. A. Yes, sir.

Q. Now, then, you were gone about an hour, weren't you [222]

A. Something like that, yes.

(Testimony of Mrs. Jane Carden.)

Q. And when you went away you left Homer Watts and Jonas there, didn't you? A. Yes, sir.

Q. And the old man? A. Yes, sir.

Q. And there was nobody else left about the house?

A. No, sir.

Q. Now, you didn't see any deeds or papers of any kind around there that day? A. No, I never did.

Q. When you got back from your ride that Mrs. Watts asked you to take, who was there then?

A. Well, I don't remember who was there when I got back. I remember Mr. Watts being there.

Q. Well, you told Mr. Hanna and myself that there wasn't anybody there when you got back, except Mr. Watts and the old gentleman, didn't you?

A. Well, that is what I remember.

Q. What say?

A. That is what I remember, Mr. Watts was there.

Q. That is what you remember?

A. Yes, Mr. Watts was there, that is Homer Watts.

Q. Now, you told me in the same conversation with me, about the same that you have told here, that you didn't know whether he was in condition to do business during the time that you were there or not, didn't you? A. Yes.

Q. Now, did you ever see any papers there or hear about his having made any papers, until after he was dead? A. Now, sir, I never did.

Q. If there were any deeds made there, you never knew anything about it or heard anything about it?

A. No, I did not.

(Testimony of Mrs. Jane Carden.)

Q. Now, since you talked with Mr. Hanna and myself, you have talked with a great many other persons about the case, [223] haven't you? They have asked you what you knew about it?

A. I don't remember of any.

Q. What say?

A. I don't remember talking to anybody else about it.

Q. Well, didn't Mr. Raley and Mr. Peterson ask you what you knew about the case?

A. I think Mr. Raley did.

Q. Well, that is what I mean. They asked you what you knew about the case and you told them just the same as you did Mr. Hanna and myself?

A. Yes.

Q. Mr. Raley and Mr. Peterson? A. Yes, sir.

Q. And did you talk in the same way about it, that is, tell Mr. Homer Watts what you knew about it, what you remembered?

A. Did I tell Mr. Homer Watts?

Q. Yes, did he ask you what you remembered about it? A. I don't think he did.

Q. Did Mr. Marvel Watts ask you what you remembered about it? A. No, he never.

Q. How many different times have Mr. Peterson and Mr. Raley asked you what you remembered about the case? A. Just the one time.

Q. Just one time? A. Just one time.

Q. When was that?

A. I don't remember. About two weeks ago, or three—something like that.

(Testimony of Mrs. Jane Carden.)

Q. About two weeks ago or three. Haven't you talked with them and told them about it since you have been here in town as a witness? That is what I mean. A. No, I have not.

Q. You didn't talk with them out here in the hall?

A. No, sir.

Q. Never said a word to them at all?

A. No, I never said anything to them.

Q. Have you ever been at Mr. Peterson's office since you have been here? [224]

Q. Or Mr. Raley's office.

A. I was there once.

Q. Oh, you were there once since you have been in town as a witness?

A. I went to see him to find out what time court sat.

Q. Who was up there when you got there?

A. Well, there was Mr. Raley and his son, and some stranger—I don't know who he was.

Q. Who?

A. Some stranger, I don't know who he was.

Q. When was that? What day was that?

A. Saturday.

Q. Did the old gentleman go out—did they take him out riding at any other time?

A. Not while I was there, they didn't.

Q. Not while you were there? A. No.

Q. Did Marvel Watts ever stay in the house all night while you were there? A. Marvel Watts?

Q. Yes.

A. I believe he did—sat up with him.

(Testimony of Mrs. Jane Carden.)

Q. What night?

A. Well, I don't remember. I think it was Saturday night—Friday or Saturday night.

Q. Before he died, Monday? A. Yes, sir.

Q. Before that time had he ever stayed in the house with him? A. Not all night.

Q. Now, did you, in all the time you were there, ever hear the old man talk about his property in any way? A. No, sir, I never did.

Q. Or about conveying it away, or deeding it away, or making any disposition of it at all? A. No, sir.

Q. You are not what they would call a trained nurse? A. No, sir, I am not.

Q. You never took a course in training?

A. No.

Q. You don't claim to be anything of that kind? [225] A. No, sir, I don't.

Q. You have a family, a little girl there, and you do most any kind of work that you can get, and nursing when you can get it to do? A. Yes.

Q. Now, when Homer was talking about taking the old man out that morning, he said that the old man wanted to go, didn't he?

A. I think he did, yes.

Q. Well, you hadn't heard the old man say anything about wanting to go, had you?

A. I never heard him say anything much. I never talked to him very much.

Q. Now, how long was it after Homer and the old gentleman got out and came in before you went out for a ride?

(Testimony of Mrs. Jane Carden.)

A. Well, just a short time after; I don't remember just how long.

Q. Now, you were in and out of the room all that time, weren't you, back and forth where the old gentleman was, until you got ready to go out?

A. Yes.

Q. There wasn't any talk about papers or deeds or anything of that kind there at all?

A. No, no, I didn't hear any.

Q. Now, you told Judge Hanna that the only night that Homer stayed with his father in the room was the Saturday night when he came, that is the night before you got there, didn't you?

A. That is stayed all night with him, yes.

Q. How late did he ever stay any other time?

A. No, I stayed with him every night until he got bad.

Q. What say?

A. Until he got bad and then some of the boys came and stayed up with him.

Q. Yes, until he got entirely delirious? He finally got entirely delirious, so he didn't know anything, didn't he? A. Towards the last. [226]

Q. And after he got so bad that he didn't know anything at all, then the boys came and stayed up with him?

A. That is his friends, some of the boy friends.

Q. Now, the only time that he was up in his chair while you were there was that day when he went out riding, and then he was up about twenty minutes, wasn't he?

(Testimony of Mrs. Jane Carden.)

A. Yes, sir, just put him in his chair.

Q. That is the only time he was up in his chair while you were there? A. Yes.

Q. Now, you never heard Homer or Marvel talk to the old man, either of them, about his property or what he was going to do with it, or about his having made or not made a will, did you, while you were there? A. No, I never.

Q. Now, you told Judge Hanna that while you were there Marvel never slept in the room with the old man, didn't you? A. No, he didn't.

Q. He didn't did he? A. No.

Q. Now, you also told Judge Hanna that if either of the boys, while you were there nursing him, Marvel or Homer, had talked with the old man about his property, or him to them, or about his making a will or deeds, you were certain you would have known? You told him that, didn't you?

A. I did.

Q. That is true, is it? A. Yes.

Q. You told him also you were certain they did not? A. Yes.

Q. Now, when they got back in the afternoon, who put the old man in bed? You did, didn't you?

A. Well, I don't remember. I might have helped put him in bed.

Q. Well, didn't you tell Judge Hanna that Homer Watts and Jonas went away from the house and that you put the old man to bed?

A. I couldn't have put him to bed alone.

Q. What say?

(Testimony of Mrs. Jane Carden.)

A. I couldn't have put him to bed alone. [227]

Q. You couldn't?

A. I couldn't have got him from the dining-room to the bed-room alone.

Q. He was so bad off you couldn't have put him in bed alone? A. No, he couldn't walk.

Q. Well, I say he was so bad off you couldn't have put him to bed alone? A. No.

Q. I believe you said just a little while ago that when you came home from your ride there was nobody there but Homer and his father?

A. I believe I did.

Q. That is true is it? A. Yes."

Testimony of Mrs. J. E. Barrett, for Defendant.

Mrs. J. E. BARRETT, sixty years old, a resident of Athena for about twenty-six years, wife of Senator Charles A. Barrett, testified that she had known Thomas J. Watts since she was about thirteen years old; that after he was separated from his second wife he came by the home of witness "as a neighbor would" and told her he had made his will and had given his property to Homer and Marvel, share and share alike, and told her that his first wife died leaving a little girl who had inherited what one of his brothers had left. (Page 556.)

Upon cross-examination she testified that she does not remember the time she had this conversation with Mr. Watts but thinks it was after he was divorced from his second wife.

Testimony of Linden S. Vincent, for Defendant.

LINDEN S. VINCENT, son of Dr. Frederick Vincent, twenty-seven years old, resident of Athena, jeweler by occupation, testified that he was acquainted with Thomas [228] J. Watts the latter part of his life; had his jewelry-store in a part of Hawks' drug-store and that he would see Mr. Watts in the drug-store, would listen to his stories and got pretty well acquainted, and that Mr. Watts seemed to know him very well; that he saw him for the last time six or eight days before his death in an automobile in front of the drug-store in Athena—the store where he had his jewelry-shop—and that he went out to the automobile and had a conversation with Mr. Watts, and was surprised to see him there after knowing that he had been so sick, talked to him and told him he looked “pretty good after being so near dead,” “as I had heard—just jollying him up” (page 560), and that Mr. Watts told him he had been pretty sick but was feeling better that day and further said, “I got outside and I feel brighter”; that he talked to him several minutes the way a man will talk to a man when he is sick, and that Henry Dell, as he thinks, came out of the store and talked with Watts; and that Byron Hawks, the druggist came out to the automobile and took an order from Watts; that Byron leaned over to talk to Mr. Watts as Watts did not hear very well; that he himself went into the drug-store and brought out a package to Mr. Watts which Hawks had fixed for Watts, but handed it to Homer as he had gotten into

(Testimony of Linden S. Vincent.)

the car; that the condition of his mind appeared to be "very bright for a man of his condition. I would consider it very bright." (Page 562.) That his conversation was just about the same as usual and that he did not observe any difference in his mental condition. "He seemed just about the same as ever to me, because I stood there quite a little bit."

Upon cross-examination he testified that he had lived [229] in Athena about four years; "I went to Athena the latter part of August, 1912. I don't know whether deceased was in Athena during the latter part of 1912. When I saw him in front of the drug-store in the automobile I thought he was looking pretty bright for a man that was so near dead." That he knew Mr. Watts not over a year and eight months, didn't know him only just in the store to talk with him and listen to some of his old tales. (Page 563.) Would see him as he would come into the drug-store, and said, "Uncle Tommy Watts joked with me quite a good deal" (page 564); that he heard Mr. Watts tell Hawks the druggist what he wanted, and Hawks "joshed him" and that Mr. Watts called Hawks "Black Hawk."

"Q. Are you in the habit of joshing dying people?

A. Well, I suppose I would josh most anybody. They josh me up there a great deal.

Q. You realized at that time that he was a man who was about to die didn't you?

A. Well, yes, I did. He was an old man but he was quite spry when I saw him down town; he didn't look so near dead as I expected to see him. I sup-

(Testimony of Linden S. Vincent.)

pose maybe I said that before I thought; but I remember saying something about dying. I remember that all right.”

**Testimony of Mrs. Homer I. Watts, in Her Own
Behalf.**

Mrs. HOMER I. WATTS, testified that she moved to Athena in 1907; became acquainted with Thomas J. Watts in 1904 and that he lived with her and her husband a part of the time after they were married, beginning in the spring of 1908, as she remembers it at a time when he had slipped on an icy walk and injured his hip, and later on had [230] slipped and hurt his shoulder; that he lived with her and her husband possibly three and one-half months at that time and also stayed with them about a month in the fall of the year 1912 and a while in the spring of the year 1913. That she remembers the occasion of Mr. Watts being brought to her home in April, 1914, from Washington and of Dr. McIntyre being there; on the next day, Sunday, his divorced wife was there the greater part of the day and also David Taylor was there and that Thomas J. Watts and his divorced wife talked with each other and seemed to be very friendly; that Mr. Watts was asleep when Dr. McIntyre was there that Sunday morning and did not talk to him; she remembers about Mr. Watts being out automobile riding and that George Winship helped Homer get him out of the car and bring him in the house and sat him on a chair and that Mrs. Carden fixed lunch for him and he ate his lunch in

(Testimony of Mrs. Homer I. Watts.)

the living-room on a chair while Homer ate at the table; that he always complained of rheumatism in his hands; that when Homer went away he told Mrs. Carden he would be back in a short time but that he was gone longer than he said he would be and when he returned home he told witness to take the car and take Mrs. Carden up to her house which she did and then went out west of town and around back to Athena (page 572.) That Guy Jonas came with him to the house and was there when she took Mrs. Carden and her little girl home and that when she returned Mr. Watts was sitting in a chair in the living-room and that Homer and Guy Jonas were also there with him; that on the day Mr. Watts was out automobile riding "he seemed the same as he always had to me," and that she did not notice any change in his mental condition until, Friday or Saturday when he began to get "rather droopy" and, on [231] Saturday he didn't seem to realize what was going on and died on Monday; that in the conversation between Mr. Watts and his divorced wife she remembers him asking her if she was sure she had plenty to take care of her and that she heard her tell him she had and that if she didn't have the boys would take care of her;

"Q. Now, prior to Tuesday, the day when the deeds were written, had you heard of Mr. Watts deeding any property, or any deeds to be written?

A. He hadn't talked to me about it, no.

Q. Well, had you heard any conversation between

(Testimony of Mrs. Homer I. Watts.)

him and anyone else regarding deeds or the execution of papers?

A. I think not; I had heard the deeds were to be written but I think my husband had told me that Grandpa Watts had asked him to write some deeds for him. I was told afterwards that some deeds were executed, but I think I never heard Thomas J. Watts mention them." (Page 573-4.) That she never had any difficulty making Mr. Watts understand when she talked with him and that he always talked back to her intelligently; that she never did at any time hear Homer I. Watts or Marvel Watts or Jennie Anderson Watts or any other person make any suggestions to him as to how he should convey his property and that if any one of them used any influence she knew nothing about it.

On cross-examination she testified that when she took Mrs. Carden out for a ride she left Mr. Watts, Mr. Jonas and her husband at the house and no one else and that they were all three there upon her return; that she wrote the John La Roque will which purported to give the bulk of his estate to Homer I. Watts but that her husband did not get the property. [232]

Testimony of Vernita Watts, for Defendants.

VERNITA WATTS testified that she was sixteen years old, daughter of Marvel Watts and Jennie Anderson Watts, and that her grandfather, Thomas J. Watts, lived at their home for about six years, and that when he would be away from home he wrote

(Testimony of Homer I. Watts.)

letters to her and that she wrote letters to him; that she never did try in any way to influence him to deed any of his property to her.

**Testimony of Homer I. Watts, in His Own Behalf
(Recalled).**

HOMER I. WATTS, recalled, identified copy of letter which he had written to Jerusha Crabb April 28, 1914, marked for identification Defendants' Exhibit "P." (Page 580.)

**Testimony of John Crabb, for Defendants (Re-
called).**

JOHN CRABB, recalled by the defendants, testified that he was the owner of about 400 acres of land in Whitman County, State of Washington, which is "good average farming property for that county and state," located about seven miles from a railroad; that he owns an automobile, has his land rented; has five children and is the husband of Jerusha Crabb; that Jerusha Crabb got \$10,000 from her uncle's estate, less some expense, but got in the neighborhood of \$9,000 net to her.

On cross-examination, he testified that his land about the time of the death of Thomas J. Watts would be worth about \$32,000, and that he and his wife were worth about that amount of money at the time of said death.

On redirect examination he testified that he would not sell his land for \$32,000, would not sell it for \$45,000 cash but believes he would take \$50,000 cash for it. [233]

Testimony of B. L. Burroughs, for Defendants.

B. L. BURROUGHS, Recorder of Conveyances for Umatilla County since January, 1911, testified that he had seen the warranty deeds—Defendants' Exhibit "B" and Defendants' Exhibit "C"—and had filed them in his office; that after they were recorded they were returned to the First National Bank of Athena and that he thinks he received them for record from the First National Bank of Athena; that when the cashier of that bank sends instruments for record he puts a blank check in with them to be filled out and that to the best of his knowledge the deeds were sent to him in that manner, but that he has no recollection about it; that he always files instruments as soon as he can after they come, but sometimes there is a "whole bunch of them comes in" and that he takes them one right after another and files them; that if those deeds had been received by him on Sunday he would not have filed them for record until Monday.

"Q. What time did you open your office, Mr. Burroughs?

A. I opened it at eight o'clock for regular business.

Q. You expected to be down at that time?

A. I always am; always here a whole lot earlier than that.

Q. And you stop at the postoffice as you come down?

A. As I come down, yes. And then sometimes somebody goes back and gets the mail, because I come

(Testimony of B. L. Burroughs.)

down too early. You see I am down here a little after six—half past six in the morning. I come down and do my comparing before it is time to open.

Q. But you stop and get whatever mail there is as you come down? A. No, I used to. I don't now.

Q. Well, at that time, I mean?

A. At that time yes, when the postoffice was down here, yes. [234]

Q. You would stop as you came down and get whatever mail there was?

A. Yes, I usually would.

Q. You had a box there?

A. I had a box there, yes. Of course, not always, I wouldn't stop, because sometimes I had a ride down. I couldn't tell you now. If I had a ride, then of course I didn't stop.

Q. But generally I mean?

A. Usually I would stop and get it, yes.

Q. Now, at this time you don't remember anything about these circumstances that occurred at that particular time? A. No, I do not, Judge.

Q. Now, when you would get a whole bunch of them together, why you would mark them right along, each one, one minute after another?

A. Yes; sometimes not one minute, but sometimes I would look over them a little and take more than a minute; sometimes take five minutes, you know, or a minute or two—whatever it was.

Q. But ordinarily when they came right in a bunch together like you had taken them out of the mail?

(Testimony of B. L. Burroughs.)

A. Oh, yes, sometimes I would be looking them over to see whether the revenue stamps were on, you know.

Q. It didn't take you but a minute to do that, did it?

A. Oh, I don't know. I cannot tell about that always. There might be something to attract my attention. I might be called to the phone, or something.

Q. Well, unless there was something equivocal about it to make you take an extraordinary amount of time? A. I would file them a minute apart.

Q. File them on the same date, one a minute after the other? A. Yes, yes.

Q. Now, are the entries in this book that you speak of at this place in your handwriting? [235]

A. Yes, that is my handwriting.

Q. Your handwriting or your clerk's?

A. Mine—my individual handwriting. My writing, yes, sir.

Q. Now, what was the purpose of making this little memorandum at the bottom on the back of these deeds? Was that for the purpose of making your entries by at a later time?

A. No, that is for the purpose of mailing them out. Then I don't have to look back here after they are recorded. Let me show you now. For instance like this. Here I have got lots of mail. Of course I have got that on the fee-book, Judge, but instead of going back to refer I can take it right off here. I

(Testimony of B. L. Burroughs.)

can mail them right out without referring to the book.

Q. Now, this book that you have got in this particular case, don't show whom they were received from, but it shows to whom they are to be returned, don't it?

A. Well, yes, received from so and so and returned to so and so.

Q. What say?

A. Received from so and so. To whom delivered, it said—to whom delivered, but then I received them generally from these people, usually from these, and then returned to the same ones, you know. Yes.

Q. Deeds are not always returned to the same ones?

A. No, no, no. No, that is not always true but it is usually so.

Q. Now, you would put down there whom they were to be returned to, wouldn't you?

A. Yes, sir.

Q. It might be the same person who delivered them or it might not? A. That is true.

Q. Now, if anyone had come in and brought these deeds and told you to return them to the First National Bank, you [236] would have put down the same entries, wouldn't you?

A. Yes, I would, yes.

Q. Just the same entries, exactly?

A. Yes, I would.

Q. And how far is it from here to Athena?

(Testimony of B. L. Burroughs.)

A. Oh, I think about eighteen miles I should say, yes.

Q. About an hour's automobile ride?

A. Why yes, less I guess, the way they go spinning along.

Q. Now the mail at that time came in from Athena twice each day, once about eight or nine o'clock in the morning and once about five o'clock in the evening, did it not? A. I believe so, yes.

Q. Now, Mr. Burroughs, I wish you would examine this book and see how many deeds were filed for record on the 20th before these two?

A. How many instruments?

Q. Yes.

A. Let's see—1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15—twenty instruments were filed prior to those two.

Q. Twenty instruments? A. Yes.

Q. Now, the first sixteen of those run right along one minute after the other? A. Yes, sir, yes.

Q. Do they not? A. Yes, sir.

Q. That is the first commenced at eight o'clock?

A. The first commenced at eight o'clock.

Q. Then the next at 8:01? A. Yes.

Q. And the next at 8:02? A. 8:02.

Q. The next at 8:03?

A. The next at 8:03, 4, 5, 6, 7.

Q. And so on? A. Up to 15.

Q. Down to 15? A. That is right.

Q. Now the 15th one was filed at 8:15, wasn't it?

A. Yes.

(Testimony of B. L. Burroughs.)

Q. Then the next one was filed at 8:20, wasn't it?

A. That is right.

Q. Now the next one was filed at 9:45 wasn't it?

[237] A. 9:45, that is right.

Q. And the next one was filed at 9:50?

A. 9:50.

Q. And then the next one was filed at 10:05, wasn't it? A. 10:05, yes.

Q. And the next are these two which were filed at 11:20 and 11:25? A. That is right.

**Testimony of Jennie Anderson Watts, in Her Own
Behalf (Recalled).**

JENNIE ANDERSON WATTS, being recalled, testified that there never was at any time prior to the execution of the deeds any understanding expressed or implied in any manner that the deeds were to be procured in order that any interest or title in the property might pass to either Homer or Marvel Watts and that there is no agreement with her regarding the matter and that she never heard of any such contention until this suit was brought and that there is no understanding whereby she would work with any other person in order to secure title to the lands.

Testimony of George Winship, for Defendants.

GEORGE WINSHIP, twenty-two years old, resident of Athena all of his life, employed in the First National Bank of Athena, testified that he knew Thomas J. Watts ever since he was large enough to

(Testimony of George Winship.)

remember and saw him the last time two or three days before he died at the home of Homer I. Watts; that he lives two blocks from Homer Watts and about three and one-half blocks from Marvel Watts; that he remembers the occasion of Thomas J. Watts going out automobile riding a few days prior to his death; that as he was going home for his dinner, he saw Mr. Watts sitting in Homer's car in front of the drug-store or Dell Brothers and that he stopped and asked Mr. Watts what he was doing out in the automobile and that Mr. Watts told him he was taking a ride; that he [238] asked him if he was going home to lunch and that Mr. Watts said to him, "No, I think we will go out to the Reservation" (page 613); that he himself was waiting to see Homer at the time and when he found out they were going out to the reservation he did not wait to see Homer but went on to the house as he had been in the habit of taking his meals at Homer's while he was working in the depot; that a while after eating dinner at Homer's house Homer and Mr. Watts came but did not get out of the automobile as Homer said, "Pap wants to go on out to the other ranch" (page 614), so they went away and when they came back Homer asked him to help take Mr. Watts in the house and that he did so, Homer holding one arm of Mr. Watts and he the other, and that when they brought him into the house they sat him down on a chair and that he himself then went to work but saw Mr. Watts every day thereafter until the last two days before he died and may have seen him thereafter in bed

(Testimony of George Winship.)

but did not speak to him as he got so he would not say anything (page 616); that on the day Mr. Watts was out automobile riding, "he just talked to me just the same as he ever did since I have known him"; that he is not related to either Homer Watts or Marvel Watts by blood or marriage.

On cross-examination he testified that he ate a meal at Homer's most every day; that he never paid for his meals there but went and ate whenever he saw fit (page 617); that he is a bookkeeper in the First National Bank and was formerly working in the O. W. R. & N. Co's office at Athena; that what he wanted to see Homer about was whether he wanted anything sent up to the house (page 618); that he knew Homer Watts had a farm on the Reservation but don't know whether old Mr. Watts had one there or not (page 619), and that when he spoke to Mr. [239] Watts, he (Watts) was headed toward the reservation; that was in an altogether different direction from the F. J. Watts home ranch. That when Homer and his father came by the house Mrs. Watts asked them if they were not going to come in and eat but that the automobile "just stopped and started," and that Homer said they were going out to the other ranch or something to that effect.

Q. Taken your meals there since? A. Yes, sir.

Q. Is that frequent or otherwise?

A. Whenever I went up there and felt like it, I would stop in and eat if it was anywhere near meal-time.

(Testimony of George Winship.)

Q. Very intimate with the Watts family?

A. I know them quite well.

Q. Any relation to any of the women of the family? A. No, sir.

Q. Are you a married man? A. No, sir.

On redirect examination he testified that he had gone to school to both Homer Watts and Marvel Watts and that he had known them both about as long as he had known anybody.

The entire record in the administration of the estate of Thomas J. Watts, deceased, in the County Court of the State of Oregon, for Umatilla County, was offered in evidence, marked Defendants' Exhibit "Q" and is included in the transcript, commencing on page 680 and ending on page 751. (See page 624.)

Defendants rest. [240]

PLAINTIFFS' REBUTTAL.

Testimony of Jerusha Crabb, for Plaintiffs (In Rebuttal).

JERUSHA CRABB, recalled by plaintiffs, testified that she didn't tell Homer Watts or any other person that it was too bad Marvel didn't let her father stay at her house and die and be out of his misery or anything of the kind; never did say anything of that kind, and that she didn't say that if Marvel had not gotten the Colfax doctor her father would have died; that she never did hear her husband say that it seemed like all the relatives were dumping their relatives on him to die or any words to that effect; that her husband always liked to have

(Testimony of Jerusha Crabb.)

her father at their home, was just good and kind to him as he could be; that her father knew she had gotten less than \$10,000 out of her uncle's estate; that her father went to Skelton's twice a year at least, during the last five or six years of his life (page 627), and would stay from a month to six weeks at the time and always seemed to think lots of Skelton and spoke very highly of him, never complained to her about him, but that she never saw Skelton until the time of the trial of this case.

“Q. Now, at the time when your father was living up there did you know or had you ever heard anything about these scandals that had been developed about your father in this case?

A. No, sir, I never heard anything until I come here.

Q. When and from whom did you first hear that there was any scandal about your father up there?

A. Which, about Mr. Skelton, you mean?

Q. No, any scandal—when and from whom did you first hear that there was a scandal about a woman up there—with your father—about your father—who told you about it first?

A. Why, Marvel did—when I was down in Athena, spoke about [241] it, but I don't know who it was—didn't know it was anything about Mrs. Skelton. That was at the time her father died, but that she didn't know Mr. Skelton had anything to do with it at the time.” (Page 627-8.)

That she did not tell Marvel Watts the will was destroyed on the 3d of April; that the will was de-

(Testimony of Jerusha Crabb.)

stroyed either Monday, Tuesday morning, or Wednesday morning before Marvel came and that he was there on Friday.

“Q. What, if any, education did you have?

Mr. RALEY.—Objected to upon the ground it has all been gone over on direct examination, and is not in rebuttal of anything offered by the defendants.

A. I went to the little country schoolhouse.

Q. Anything else? A. Nothing.

Q. I am not sure whether I asked you this or not but I will ask you now to make sure; did you ever get any assistance in the matter of your education from your father’s estate? A. None whatever.

Q. Now, you have heard the testimony of Mrs. Marvel Watts and Vernita as to she and Vernita being good to your father when he was at their house? A. Yes, sir.

Q. How were your children towards him when he was at your house?

A. They were good to him.

Q. How did they feel towards him and him towards them?

A. They thought lots of him and he seemed to think an awful lot of them.

Q. Now, there was some testimony about lacing shoes. Who laced his shoes for him at different times in the last years, when at your house?

A. I or my daughter, one or the other; either one of us—whichever one was around—waited on him.

[242]

Q. Now, did you make any hardship of that or

(Testimony of Jerusha Crabb.)

were you glad to do it?

A. We was glad to. He was always easy pleased and pleasant.

Q. During the last six years, how many times have you nursed him through sickness?

A. Never through sickness but once till this last sickness.

Q. Well, that makes twice then altogether?

A. Yes.

Q. When was the first time?

A. Why it was three years before he died; the winter three years before he died.

Q. How long was he sick at your house that winter?

A. He came to my place the fore part of December and stayed till some time the latter part of February.

Q. And what part of that time was he sick there?

A. Well, it seems as if he caught cold, a severe cold, coming down from Spokane, and it settled in his head. He had a gathering in his head. He was able to sit up all the time but he was very *deal* and very poorly.

Q. Well, now who took care of him and nursed him through that sickness?

A. I did and my daughter; she was there.

Q. That is the daughter who is now Mrs. Wheeler?

A. Yes.

Q. She was not married then?

A. No, she was going to school. We was living in St. John at the time.

(Testimony of Jerusha Crabb.)

Q. Now, then, this last sickness, did your daughter help you take care of him?

A. Yes, sir, when I wasn't there, why, she took care of him.

Q. Now, during that last sickness when he was at your house, was your toilet in the house or out of the house? A. Out of the house.

Q. Was he able to go to the toilet during all of that time [243] that he was up there?

A. No, sir, he never went out of doors after the first morning he was there.

Q. He went out the first morning, did he?

A. Yes, sir.

Q. After that—

A. He never was out of doors till they carried him out.

Q. After that you attended to him in the house, did you? A. Yes, sir.

Q. Did your daughter help you about that?

A. Yes, sir, lots of times.

Q. Did you think that was any hardship?

A. No, sir.

Q. You were glad to do that? A. Yes, sir.

Q. At this time when he was sick three years before he died, did your husband help you to take care of him? A. Yes, sir.

Q. How was he—was he glum or was he cheerful about it? A. He was always cheerful.

Q. Did he seem to think that it was any burden at any time to help take care of your father?

A. No, sir.

(Testimony of Jerusha Crabb.)

Q. He was always cheerful? A. My husband?"

"That Homer Watts in the presence of her husband and Judge Hanna in his office when they were trying to investigate this matter in June after her father's death, said 'That his brother Marvel didn't know anything about these deeds until after his father's death.'"

On cross-examination she said that Homer told her he wrote the deeds; that she never heard anything about the trouble between her father and the Skeltons until after her father's death; that she never was adopted by her uncle.

Testimony of John Crabb, for Plaintiffs (In Rebuttal).

JOHN CRABB, recalled by plaintiffs, testified that he was at the funeral of Mr. Watts; that he did not hear his [244] wife say anything to Marvel about being sorry that Marvel didn't leave her father at her house so that he would have died and been out of his misery, but did hear her say he would have died if Dr. Mitchell had not been there to help Dr. McIntyre; that he did not say to Marvel Watts that it seemed like all the relatives were being dumped upon witness or anything of the kind; that Mr. Watts was very nice and very easy to take care of in the condition he was, always had a nice word to say, was pleasant and agreeable and was "not a grouchy man at all."

"Q. How did you feel about having him there?

A. My wife had helped me to take care of my

(Testimony of John Crabb.)

father for fourteen years and I felt grateful that I could help take care of him." (Page 639.)

That Mr. Watts seemed to like the Skeltons and to enjoy their company and said that "they treated him well and took care of him good"; that he never heard anything about the scandal between Mr. Watts and Skelton's wife until after the death of Mr. Watts; that he and Judge Hanna were at the home of Mrs. Carden and had a conversation with her; that Judge Hanna is one of the leading lawyers in Spokane (page 642); and that Mrs. Carden told him that if Marvel or Homer had talked with Mr. Watts about this property or about making a will or deeds she would have known it and that she was certain they did not talk to him about it. Also she said that Guy Jonas was the man who helped take the old gentleman out of the automobile when they came back from the ride. She also said that Mrs. Homer Watts asked her to take a ride with her; that she afterwards repeated all these same things to Mr. Bennett (pages 641-2). That he did not hear his wife and Marvel's wife talk about the will at [245] his house about the 3d of April; that the will had been destroyed three or four days before Marvel came up there on the 3d of April; that they were first informed about the deeds when they got notice that the administrator was appointed (page 644); that Mr. Watts was sick at his home through the months of December, January and a part of February about three years before he died; that he and his family took care of him and nursed him through

(Testimony of John Crabb.)

that sickness, and laced his shoes and paid him such little attentions; that they thought it no burden and were glad to do it and glad to accommodate him and favor him in any way they could (page 644); that he heard Homer Watts say in the presence of Judge Hanna and Jerusha that Marvel didn't know anything about the deeds until after his father's death.

Upon cross-examination he testified that he and Jerusha and Judge Hanna were at Homer's office about an hour and a half in the month of June after the death of Mr. Watts and at the time he made this statement:

“Now are you sure that Homer said that Marvel didn't know anything about the deeds being made out until after his father's death or until after they were made?”

A. He said until after he was dead.

Q. You remember that distinctly?

A. Yes, sir.” (Page 646.)

That Homer told them about how the deeds were made; that Mr. Watts did not learn before the year 1910 that Jerusha would not get over about \$9,000 from her uncle's estate; that Mr. Watts told him once eight or nine years before his death that he had made a will and burned it up or destroyed it but did not tell him about making the last one—never told him that he ever left Jerusha anything; never told him anything about burning up or destroying the last will— “He never told [246] me anything about it.” Witness then said, “He did too, the morning after he had burned it up, he said

(Testimony of John Crabb.)

he had burned it up; just as quick as I came in after he burned it—it was not more than half an hour he told me he had burned it up” (page 651); that at another time Mr. Watts said to him, “Now, John, I have burned up the will” (page 652); that he does not remember having had any talk with Marvel about the will. That he went with Judge Bennett to Athena to gather evidence, went to see Mrs. Carden but did not tell Judge Bennett that he and Judge Hanna had talked with her (page 656); that he remembers Mrs. Carden told him and Judge Hanna that Guy Jonas helped to take Mr. Watts out of the car after they had taken a ride and that she told them Guy Jonas helped put him in the car; that Mrs. Carden told him and Judge Hanna she had taken care of Mr. Watts but that she and Mr. Watts didn’t talk much together, that she went there to wait on him Sunday morning and that when people came in she would step outside and didn’t stay to hear conversations between them and Watts (page 660); that Mrs. Carden told him and Judge Hanna that Mrs. Watts had asked her to take a ride in the car that day as she was ready to go home—said something about going home. “She said she wanted to go home and that when Mrs. Watts asked her if she would take a ride with her in the car she said yes, but she wanted to go home” (page 661); that Mrs. Carden told Judge Bennett that Guy Jonas and Homer Watts helped put Mr. Watts in the car when they started to ride, and also told them that Homer and Mr. Watts and Guy Jonas were there

(Testimony of John Crabb.)

at the time they came back from the ride (page 665) told them that Guy Jonas came just about the time the car came and helped take Mr. Watts out and put him in the house (page 665); that Mrs. Carden told them that [247] Guy Jonas came to Homer's afoot.

Testimony of James A. Fee, for Defendants.

JAMES A. FEE testified that he had been a practicing attorney at Pendleton since 1884 and that he was at one time Circuit Judge for seven and one half years; introduced himself to Marvel Watts the latter part of July, 1914, at his office at the mill, had a talk with him and that Marvel told him he did not know anything about the deeds in question until after his father's death. That he is positive that Marvel made that statement (page 669).

On cross-examination he testified that after he walked out of the mill and reached a picket fence quite a distance from the mill he stopped and made a memorandum of his conversation with Marvel Watts but had been unable to find the memorandum but did find a reference to it that convinces him the conversation occurred; that he was there for the purpose of interviewing Mr. Watts regarding an adjustment of the matter before it reached a stage of litigation as he had prior to that time talked with Judge Hanna and possibly with Mr. Crabb.

Being further examined by Mr. Homer Watts, one of the defendants, witness testified (page 670) that there was not a great deal of conversation between

(Testimony of James A. Fee.)

himself and Marvel Watts; that Marvel Watts and Homer Watts may have been at his office thereafter but that he is not positive; that he don't think that he made any such statement, that he feels confident he did not (page 671); that he was convinced there was nothing in Mrs. Crabbs' contention—but thinks he did talk to Marvel and Homer in his office—thinks they came regarding some little matter that had occurred in the accounting which was not fully covered (page 672); that he told Marvel and Homer about his own father having a little money [248] and one of the children getting him away and taking the money away from him and putting him back on witness to die (page 672); but that he did not tell them he believed Jerusha had tried to get Mr. Watts up to her home to get his property away from him or words to that effect, and that he is absolutely positive about it; that he talked with Homer Watts twice about this matter; that he didn't go to see Marvel Watts to get any statement from him at all except to see whether an adjustment could be made or not (page 673); that Marvel Watts told him the deeds were made by his father in pursuance to a plan he had in mind for years prior to that and that he (Marvel) had no compromise to make with Mrs. Crabb, and that Marvel further told him that when he (witness) saw Mrs. Crabb she would do all of the talking and that he would have no chance to do any part of it, and further told him that she had been to Athena, gone to his home when he was away, inquired where he was and would not believe his

(Testimony of James A. Fee.)

family's statement he was away from Athena. That the County Court proceedings were dismissed at the suggestion of himself and Judge Hanna and that he was satisfied that the accounting was fair and was made fully and in good faith. That he remembers Homer Watts being in his office after the present suit was brought and that he told Homer Judge Bennett was the man who was bringing the case, or words to that effect, but that he did not tell Homer Watts there was "nothing in the case," but "I may have said to Mr. Homer Watts at some time that the case was a doubtful case, or something of that character, because I regarded it so" (page 678); that he did not tell Homer he told Judge [249] Bennett he had gone into the case thoroughly and had convinced himself there was nothing in it, but did tell him that his name would not have been upon the pleadings except for the fact that Judge Bennett had been to his office and said, "Well, I will think about whether to file the case or not, but if I do I may join your name with me on the pleadings." (Page 678.)

In the record in the County Court of the State of Oregon for Umatilla County, in the matter of the estate of T. J. Watts, deceased, it is alleged (in the petition for the appointment of administrator) that T. J. Watts died intestate on the 20th day of April, 1914, in said county and state, was the owner of real property of the probable value of \$5,000. That M. L. Watts was appointed administrator of the estate on the 24th day of April, 1914, filed an under-

(Testimony of James A. Fee.)

taking in the sum of \$6,000 on the 24th day of April, 1914, which was approved by the County Judge; that letters of administration were issued on the 24th day of April, 1914; that the inventory and appraisement was filed on the 29th day of April, 1914, appraising the real property belonging to the estate at \$4,100; that notice to creditors was published in the "Athena Press" newspaper for four consecutive weeks, commencing on the first day of May, 1914. That Jerusha Crabb filed a petition on the 30th day of October, 1914, alleging among other things that after the death of T. J. Watts, M. L. Watts and Homer I. Watts wickedly and corruptly conspired and confederated together for the purpose of cheating, wronging and defrauding the said Jerusha [250] Crabb out of her "just share and portion of the estate of said deceased," and as a part of the conspiracy caused to be filed a petition for the appointment of an administrator and obtaining the appointment of M. L. Watts as administrator; that for more than ten years prior to the death of T. J. Watts he was the owner of about five hundred acres of tillable lands capable of producing large and valuable crops and that M. L. Watts and Homer I. Watts had the lands leased for about ten years and had raised large and valuable crops thereon, and that the deceased during the last five or six years of his life had loaned and placed in their keeping large sums of money amounting to many thousands of dollars and that after the appointment of M. L. Watts as administrator they "falsely and fraudulently and with intent

(Testimony of James A. Fee.)

and purpose of cheating, wronging and defrauding Jerusha Crabb caused the estate of the said T. J. Watts to be appraised and listed only eighty acres of land as belonging to the estate (describing it); and further alleged that they had never accounted to or with the deceased for the rents, issues and profits of the lands farmed by them and that they had not paid moneys loaned them by him or which had been placed in their keeping; that at the date of his death the rents, issues and profits of the land and the moneys loaned to and placed in their charge constituted a part of the estate, and that the time of making the inventory and appraisement of the estate they well knew the rents, issues and profits of the lands had never been accounted for nor paid over to the deceased in his lifetime, and that the said rents and money constituted a part of the estate and that a just and equitable accounting would show there [251] were due the estate large sums of money aggregating more than \$12,000, "the exact amount being unknown to your petitioner," and that if they were permitted to continue acting as administrator and as attorney for the estate they would waste the property thereof in useless and expensive litigation and sequester the property and convert it to their own use and that they "will wickedly, wrongfully and corruptly deprive this petitioner of her just share therein and portion thereof" (page 694). The prayer of petition asks that they be required to account to the court for the rents, issues and profits of the real property and for the moneys

(Testimony of James A. Fee.)

loaned to or left in their keeping and be required to pay the same over and that Homer Watts be removed as attorney of the estate and that M. L. Watts be removed as administrator and that "some honest and competent person be appointed as administrator thereof to recover the property of the said estate and dispose of the property thereof under the direction of the court." (Page 695.) The petition was signed by James A. Fee and Hanna and Hanna, Attorneys for the petitioner and sworn to by Jerusha Crabb on the 27th day of October, 1914. Thereafter, on the 1st day of December, 1914, M. L. Watts and Homer I. Watts filed their answer admitting the death of T. J. Watts, appointment of administrator, appraisal of the property, but denying all of the remainder of the material allegations of the petition and further alleging that they had farmed the lands of their father for ten years in a husbandly manner in full compliance with agreement made with him and that they had a full and complete settlement and accounting with the said father each and every year. Thereafter on the 26th day of January, 1915, Jerusha Crabb filed her reply in which she [252] denies nearly all of the material allegations of the further and separate answer of the said Homer I. Watts and Marvel Watts.

On the 9th day of March, 1915, she filed a motion with the county court asking for an order requiring M. L. Watts, as administrator, and Homer I. Watts as his attorney, to produce in court on March 10, 1915, all books, papers, vouchers, receipts, accounts,

(Testimony of James A. Fee.)

letters and other things in their possession or under their control pertaining to the estate and especially all books of accounts, showing the condition of accounts between them and the said decedent, in order that said documents might be open to the inspection of the said Jerusha Crabb and her attorneys. On the 9th day of March, 1915, pursuant to said motion, the County Judge made the order prayed for. Thereafter on the said 10th day of March 1915, the petition came on for hearing in open court, the petitioner appearing in person and by E. K. Hanna and James A. Fee of her counsel, and the administrator and his attorney in person and by Will M. Peterson of their counsel. A conference was had. The books, accounts and papers were examined, the matter discussed and considered by all of the parties, and the petitioner was satisfied that she would not be able to sustain any of the material allegations of her petition and represented that her petition might be dismissed.

Whereupon it was ordered, considered and adjudged by the court that her petition be dismissed. Thereafter on the 30th day of March, 1915, a report was filed by the administrator. On the 22d day of June, 1915, a petition for the sale of the eighty acres alleged to belong to [253] the estate and which the testimony in this case shows to have been actually sold to pay the debts of said estate was filed; an order for citation was issued on the same day, citation issued the same day. Order for publication of citation was issued on the second day of July, 1915,

(Testimony of James A. Fee.)

and citation published in the Athena Press at Athena, Umatilla County, Oregon, requiring the heirs of the estate to appear before the court on the 31st day of July, 1915, and show cause if any why an order of the Court should not be made authorizing the said sale of the real property. On the 4th day of August, 1915, default of Jerusha Crabb for want of answer was entered by order of the Court. Thereafter on the same day an order for the sale of the real property was made, notice given, proof filed with the clerk, sale was made on the 4th day of September, 1915, to F. B. LeGrow for \$4,100. Return of the proceedings of the sale was filed September 14, 1915. Order confirming sale of the real property was made on the 28th day of October, 1915. Final account and report of the administrator was filed on the 6th day of November, 1915. Order appointing time and place for final settlement was filed the 6th day of November, 1915, appointing the 11th day of December, 1915, at the hour of ten o'clock as the time for the hearing of the final account. On the 13th day of December, 1915, decree upon final account was filed in which the administration of the estate was ordered closed.

WILL M. PETERSON,
RALEY & RALEY,
Attorneys for Defendants.

Order Approving Statement of Evidence.

The foregoing statement of facts is duly approved as the transcript in the cause.

CHAS. E. WOLVERTON,

Judge.

Filed July 20, 1918. G. H. Marsh, Clerk. [254]

And, to wit, on the 7th day of June, 1918, there was duly filed in said court a praecipe for transcript, in words and figures as follows, to wit: [255]

In the District Court of the United States for the District of Oregon.

Case No. 7340—IN EQUITY.

JERUSHA CRAB and JOHN CRAB, Husband
and Wife,

Plaintiffs,

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS and VERNITA
WATTS,

Defendants.

Praecipe for Transcript of Record.

To G. H. Marsh, Clerk of the Above-entitled Court:

There is presented and filed herewith such portions of the evidence as the appellants deem essential for a decision of the questions presented on appeal in the above-entitled matter, and you are hereby requested and directed to at once prepare a transcript

of record on appeal in the above-entitled cause, and to incorporate therein that portion of the evidence herewith presented.

You are requested and directed also to incorporate in such transcript of record all the pleadings in said cause, including the complaint, process, return and answer and reply, the opinion of the Court and its decree in said cause, and also the appellate proceedings in your office, containing a petition for appeal, assignments of error, order allowing appeal and bond, citation on appeal and service thereof, and a copy of all deeds of conveyance offered in evidence in said cause.

Dated this 6th day of June, 1918.

JAMES H. RALEY,
WILL M. PETERSON,
Attorneys for Appellant.

Service by copy of praecipe and facts is hereby accepted at Pendleton, Or., this 6th day of June, 1918.

JAMES A. FEE,
One of Attorneys for Plaintiff.

Filed June 7, 1918. G. H. Marsh, Clerk. [256]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 3 to

256, inclusive, contain a true and complete transcript of the record of proceedings had in said court in accordance with the praecipe for transcript filed by the appellants in the case of Jerusha Crab and John Crab, husband and wife, plaintiffs and appellees, against Homer I. Watts, Marvel Watts, Jennie Anderson Watts, and Vernita Watts, defendants and appellants, as the same appear of record and on file at my office and in my custody; and I further certify that the cost of the foregoing transcript is \$74.40 and that the same has been paid by the said appellants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 26th day of August, 1918.

[Seal]

G. H. MARSH,
Clerk. [257]

[Endorsed]: No. 3207. United States Circuit Court of Appeals for the Ninth Circuit. Homer I. Watts, Marvel Watts, Jennie Anderson Watts, and Vernita Watts, Appellants, vs. Jerusha Crabb and John Crabb, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed August 29, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the District Court of the United States for the
District of Oregon.*

No. 7340.

June 27, 1918.

JERUSHA CRABB and JOHN CRABB

vs.

HOMER I. WATTS, MARVEL WATTS, JEN-
NIE ANDERSON WATTS and VERNITA
WATTS,

**Order Enlarging Time to August 1, 1918, to File
Record and Docket Cause.**

Now, at this day, for good cause shown, IT IS OR-
DERED that the time within which the defendants
above-named are required to docket this cause and
to file the transcript of record thereof in the United
States Circuit Court of Appeals for the Ninth Cir-
cuit be, and the same is hereby, extended to August
1, 1918.

CHAS. E. WOLVERTON,
Judge.

[Endorsed]: No. 3207. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 16 Enlarging Time to Aug. 1, 1918, to
File Record Thereof and to Docket Case. Filed
Jul. 1, 1918. F. D. Monckton, Clerk.

*In the District Court of the United States for the
District of Oregon.*

No. 7340.

July 26, 1918.

JERUSHA CRAB and JOHN CRAB

vs.

HOMER I. WATTS et al.

**Order Enlarging Time to and Including August 15,
1918, to File Record and Docket Cause.**

Now, at this time, for good cause shown, it is ORDERED that the time for filing the transcript of record on appeal in this cause and for docketing this cause in the United States Circuit Court of Appeals, for the Ninth Circuit, be and the same is hereby extended to and including August 15, 1918.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: No. 3207. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 15, 1918, to File Record Thereof and to Docket Case. Filed Aug. 8, 1918. F. D. Monckton, Clerk.

*In the District Court of the United States for
the District of Oregon.*

No. 7340.

August 13, 1918.

JERUSHA CRAB and JOHN CRAB

vs.

HOMER I. WATTS et al.

**Order Enlarging Time to and Including August 31,
1918, to File Record and Docket Cause.**

Now, at this day, for good cause shown, it is ORDERED that the time for filing the transcript of record on appeal in this cause and for docketing this cause in the United States Circuit Court of Appeals, for the Ninth Circuit, be and the same is hereby extended to and including August 31, 1918.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: No. 3207. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 31, 1918, to File Record Thereof and to Docket Case. Filed Aug. 19, 1918. F. D. Monckton, Clerk.

No. 3207. United States Circuit Court of Appeals for the Ninth Circuit. Homer I. Watts et al. vs. Jerusha Crabb et al. Order Three Under Rule 16 Enlarging Time to Aug. 31, 1918, to File Record Thereof and to Docket Case. Refiled Aug. 29, 1918. F. D. Monckton, Clerk.